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הלומד ירושליيم

Fourth Order: Neziqin

סדר נזיקין

Tractates Ševu‘ot and Avodah Zarah

מסכתות שבועות ועבודה זרה

Edition, Translation, and Commentary

by

Heinrich W. Guggenheimer

De Gruyter
Preface

The present volume is the thirteenth in this series of the Jerusalem Talmud, the third and final in a three-volume edition, translation, and Commentary of the Fourth Order of this Talmud. The principles of the edition regarding text, vocalization, and Commentary have been spelled out in detail in the Introduction to the first volume. The text in this volume is based on the manuscript text of the Yerushalmi edited by J. Sussman for the Academy of the Hebrew Language, Jerusalem 2001. The text essentially represents an outline, to be fleshed out by a teacher’s explanation. The translation should mirror this slant; it should not endow the text with literary qualities which the original does not possess. In particular, the translation is not intended to stand separate from the Commentary.

The extensive Commentary is not based on emendations; where there is no evidence from manuscripts or early prints to correct evident scribal errors, the proposed correction is given in the Notes. As in the preceding volumes, for each paragraph the folio and line numbers of the Krotoschin edition are added. It should be remembered that these numbers may differ from the editio princeps by up to three lines. It seems to be important that a translation of the Yerushalmi be accompanied by the text, to enable the reader to compare the interpretation with other translations.

Again, biblical quotations are given with the accents, except for words which differ (usually by *plene* spelling) from the masoretic texts. Since the quotes are part of oral tradition, the deviations in spelling are examples of substandard spelling, rather than changes in the text.

Again, I wish to thank my wife, Dr. Eva Guggenheimer, who acted as critic, style editor, proof reader, and expert on the Latin and Greek vocabulary. Her own notes on some possible Latin and Greek etymologies are identified by (E. G.).
I thank the staff of the Jewish Division of the New York Public Library for providing me with copies of the Genizah texts of Tractate *Avodah zarah*.
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Introduction to Tractate Ševuʻot

The Tractate “Oaths” has two parts. The first three chapters are ritualistic, the later five are partially legalistic. The ritualistic part is based on Lev. 5:1-13, 20-26, detailing the sacrifices required for rash or senseless as well as false oaths. Since Lev. 5:1-13 states the same treatment for infringements of the purity of the Temple or of sacrifices as for rash or senseless oaths, the first Chapter, after an introduction listing matters which can be classified as “two kinds which split into four cases”, treats inadvertent impurity of sacrifices and their atonement, whether by sacrifice or the Temple service of the Day of Atonement. The Second Chapter then defines the places which can claim the holiness of the Temple and require atonement for inadvertent violations of its purity.

The third Chapter starts with an enumeration of the two/four ways in which a non-judicial oath can be irrelevant or false, whether by one’s own initiative or formulated by others. The oaths are punishable by flogging if made before witnesses after due warning, or sacrifices following the same rules as infringements of purity if inadvertent.

The Fourth Chapter deals with oaths which serve as subpoenas to testify. The basic situation is that A says to B I put an oath or an imprecation on you that you should come and testify for me. If B agrees by saying “Amen” and then reneges on his duty, he has violated the oath as described in Lev. 5:1. These oaths can be imposed in or out of Court. The Chapter ends with a discussion of the use of substitutes for the Divine name in imprecations.

Chapter Five deals with the oaths by which people falsely defend themselves against monetary claims (Lev. 5:21-26). While the doctrines of judicial proof are detailed in Tractates Neziqin and Ketubot, the Chapter mainly deals with the obligations for sacrifices, with an appendix about the rules by which judicial fines can be imposed.
Chapter Six treats oaths imposed by the court on a defendant in a case in which he partially admits claims not proven by documents or witnesses. He has to swear that he does not owe the part of the claim which he disputes. The oath cannot be imposed if either the defendant rejects the claim in its entirety, when the claimant has to provide proof by witnesses or documents, or if the defendant rejects the claim but admits an unrelated one. Also, matters that must be documented such as real estate claims cannot be settled by oath.

Chapter Seven deals with rabbinic oaths instituted in the interest of social justice, such as the power of the worker to claim unpaid wages by an oath without having to produce witnesses, or cases involving a widow and her husband’s heirs, or dissolutions of partnerships, where documents proving exact accounting may be difficult or impossible to obtain.

Finally, Chapter Eight treats the biblical oaths imposed on trustees in case a deposit was damaged or lost, Ex. 22:6-14. Since these rules are treated at length in Tractate Neziqin, the corresponding Chapter in the Babli is very short. Since the treatment in the Yerushalmi Neziqin is so very short, the Chapter here is more substantial than its Babli counterpart.
Mishnah 1: There are two kinds of oaths which are four kinds\(^1\). There are two kinds of awareness of impurity which are four kinds\(^2\). There are two kinds of export on the Sabbath which are four kinds\(^3\). There are two kinds of appearances of skin disease which are four kinds\(^4\).

1 *Lev. 5:4* requires a reparation sacrifice for inadvertent breach of a commitment made by oath, “what was pronounced, negatively or positively.” The standard example of a positive oath is somebody swearing that he will eat certain foods. The corresponding negative is an oath that he will refrain from eating certain foods. The exact expression used, *לחminster | אל לחminster*, by its *hiph’il* form points to the future. A natural complement are backward looking oaths, if a person swears that he ate or did not eat certain foods in the past (Mishnah 3:1). These four cases are equal in sanctions for willful or inadvertent breach.

2 *Lev. 5:2-3* requires a reparation sacrifice for a person who became impure, forgot it, and then either ate *sancta* in his impurity or entered the Sanctuary. The two added cases are that he knew about being impure but forgot that the food was holy or that the place was a Sanctuary.

3 It is forbidden to transport anything on the Sabbath from a private domain to the public domain (Mishnah *Sabbat* 1:1). “Transport” includes lifting up, moving, and setting down. The two cases where one is liable (for a sacrifice if the sin was unintentional, punishment if the transgression was intentional and is prosecutable, or extirpation by Divine decree if the crime was intentional but is not prosecutable) are “export” by a person standing inside the private domain, lifting something up inside the domain and putting it down on the outside (e. g., through a window) even without moving his feet, or “import”, somebody lifting an object from the outside to the inside and depositing it there. The two cases where one is not liable refer to a person inside who lifts an object, hands it to a person outside (so that the object never is at rest) and the second person puts it down. Since no one person completed a criminal act, no one can be held liable even though the combined action clearly is forbidden.

4 *Lev. 13:2* defines impure skin disease as *זָוַע* (an elevated spot, *

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**מכות א.** שביעית שמחה שמח שמח. דעיהת השכחה שמח שמח שמח. 

**מראות השכחת שמח שמח שמח.** קראות ננאות שנאות שמח שמח.

**Mishnah 1:** There are two kinds of oaths which are four kinds\(^1\). There are two kinds of awareness of impurity which are four kinds\(^2\). There are two kinds of export on the Sabbath which are four kinds\(^3\). There are two kinds of appearances of skin disease which are four kinds\(^4\).
or sapahat, or a white spot.” This is read as “an elevated spot (which makes the surrounding skin look elevated over the whitish spot) and a really white spot and their appendages”, deriving sapahat from the root ספח, “to append, adjoin.” This extends the definition of impure skin disease from two relatively well defined cases to two additional weaker symptoms.

5 Two which are for liability and two which are four for no liability, or four for liability and four for no liability? Let us hear from the following: “There are two kinds of oaths which are four kinds,” etc. 7 Rebbi Yose said, the Mishnah says so, “there are two kinds of oaths which are four kinds,” not because of liability? And similarly, “there are two kinds of export on the Sabbath which are four kinds,” because there is liability 8. 7 Rebbi Abba said, there all are about liability, but here we come to state both liability and no liability. This implies four of liability and four of no liability. But did we not state, the doors of the Temple hall were two which are four? Can you say, liability and no liability? Should we state twelve cases of no liability? We come to state cases of no liability which correspond to cases of no liability. Rebbi Hiyya barAda 13 said, what is this “no liability” which we stated here? Permitted! Rebbi Yose said, the poor man and the rich man are one but the Sages counted them as two. Exporting or importing are two but the Sages
counted them as one. Exporting on the Sabbath does not include importing; if one exports from one domain this does not include importing. In addition, from what Rebbi Yasa said in the name of Rebbi Johanan: Somebody who imports half the size of a dried fig and exports half the size of a dried fig is liable. And from where that exporting is called work? Rebbi Samuel in the name of Rebbi Johanan: “Moses ordered, they made a public proclamation in the camp, etc.” The people refrained from taking objects out from their houses to give them to the collectors, who also did not take out anything from them to import into the office. Rebbi Hizqiah in the name of Rebbi Aha understood it from the following: “do not bring out any load from your houses on the Sabbath day, and perform no work.”

5 This paragraph is a slightly garbled copy of the first paragraph in Tractate Šabbat 1:1, of which there exists a Genizah parallel (L. Ginzberg, Yerushalmi Fragments from the Genizah, New York 1909, p. 62). The text in Šabbat is original since in both versions, “here” refers to Šabbat while “there” refers to Ševuot, and in addition, the statement of R. Ba logically has to precede that of R. Yose as in the Šabbat text. Probably the scribe of the Ševuot text available to the Leiden ms.’s scribe had omitted the statement of R. Ba and added it in the text when he noticed the omission. S. Liebermann, in his Commentary to the Yerushalmi Šabbat (Hayerushalmi Kipshuto, New York 1995, Jerusalem 1935) holds that the source is Ševuot. This is difficult to accept; the text is from Šabbat but the problem is the discrepancy in meaning of the same expression “two which are four” used in very different meanings in our Mishnah.

The problem starts with the rather complicated language of Mishnah Šabbat 1:1: “There are two cases which are four for exporting and two cases which are four for importing.” The Mishnah then goes on to explain that if a rich person, the owner, stands at the window of a house (which is a private domain) and a poor person stands in the street (the public domain), if then the rich person delivers an object to the poor outside, or the poor reaches inside and takes the object, the person acting is liable to prosecution but the other is not liable. (In fact, the passive participant never did do anything; the expression “not liable to prosecution” is inappropriate.) But if the rich person lifted the object, kept it moving all the time, and handed it to the poor who put it down, nobody is liable since nobody completed a forbidden act. The same naturally applies if the poor takes up a package and keeps it moving until the the owner of the house takes it and puts it down. In this case, the qualification as “not liable” is appropriate since both participants
violated a Sabbath prohibition.

The question now arises whether the formulation “two which are four” always implies that the status of the two additional cases is different from the two original ones since in our Mishnah the same expression is used for oaths and Sabbath violations.

6 S. Liebermann (Note 5) proposes to delete “four which are not liable” as induced by the preceding statement about “two and two” even though the text is common to all three versions at our disposal and it is difficult to assume that the redundant text was taught in the Galilean Academy. For the rules of the Sabbath, the case is simple and there is no redundancy. In the formulation of Mishnah Šabbat 1:1 there are four cases of liability, rich or poor taking out or rich or poor bringing in. There are also four cases where there is no liability, depending on who takes up the object first and who takes over, and what the direction of the move is. The question now is raised whether a similar case can be made for the first clause in Mishnah Ševuot 1:1.

7 The statement of R. Abba later in this paragraph should be inserted here as noted in Note 5. While “here” in Šabbat the Mishnah itself explains that there are two cases of liability and two of no liability, the situation in Ševuot is different; all four cases trigger the obligation of a sacrifice for inadvertent infraction and punishment for intentional infraction in the presence of witnesses.

8 Rebbi Yose disagrees with R. Abba. Since everybody agrees that there are four cases which trigger a liability for oaths, the fact that the statement about Sabbath is formulated in the same Mishnah and in parallel form implies the same meaning in both clauses. Since Note 7 shows that Mishnah Šabbat 1:1 enumerates four cases of liability, there is no obstacle to reading the Sabbath clause in parallel to the oath clause. It is shown later in the paragraph that there are explicit verses only to forbid export; the parallel prohibitions of import are rabbinic interpretations.

9 This baraita refers to Mishnah Middot 4:1 which explains that the entrance gate to the Temple hall was built in the manner of a city gate, a thick wall closed by an outer double door opening to the outside and an inner two-winged door opening to the inside. The expression “two doors which are four” is simply the description of the structure of the building.

10 This is inappropriate here.

11 Mishnah Šabbat 1:1 counts four actions for which one is liable (complete actions, export and import for the rich person, export and import for the poor.) Then it counts four cases for which one is not liable, but since for any incomplete action one is not liable one could consider the possibility that the poor man reaches into the house, lifts the object which the rich then takes up and deposits on the outside. A similar convoluted action is possible for import; two actions for two actors each result in four non-liabilities.

12 Only those cases are counted where a direct action, resulting in liability if executed by one person, imply no liability if done by two. The convoluted cases of Note 11 are not noted since they do not correspond to a case that could involve only one actor.

13 In Šabbat: bar Abba. In the Babli,
The expression “no liability” is used in Mishnah Sabbath 1:1 in two completely different senses. As noted earlier (Note 5) if the complete action is performed by one person, the other one is passive and does not infringe on any law; at all times everything he does is permitted. But if the action is completed by two persons, both sinned. While they are not liable for a sacrifice or punishment, they require repentance and Heaven’s forgiveness.

Since both the rich man and the poor are described as executing the same actions, there is no intrinsic reason why they should be considered separately. It only is to emphasize the importance of the rules of transporting on the Sabbath. But, as will be shown in the sequel, not to bring out is a direct biblical command while not bringing into a private domain from the public one is an inference; the rules of importing must be transferred from those of exporting.

In Sabbath, the Genizah text and the first hand of the Leiden ms. read “Exporting or importing are one but the Sages counted them as two” but as S. Liebermann (Note 5) has noted, the reading here is supported by early Medieval quotes.

Since there are no verses spelling out the prohibition of carrying from the public domain to a private one.

Importing into one domain is exporting from another. There seems to be no reason to make a distinction between domains (even though there is a big difference since in a private domain one may carry without restriction but in the public domain only for a distance of less than 4 cubits.)

While any transport from one domain to another on the Sabbath is sinful, it creates a liability only if the object is of a minimal size (Sabbath Chapters 7-8). For solid food, the minimum is fixed at the volume of a dried fig. The two actions mentioned will combine if there was continuous awareness of the Sabbath prohibitions.

Ex. 36:6. The verse speaks of donations for the construction of the Tabernacle. The Babli (Sabbath 96b) finds a tenuous connection with the Sabbath by a gezerah šawah, concurrent use of words.

Jer. 17:22. While prophetic books are not sources of law, they are authentic evidence for the understanding of the Torah by the teachers of past generations. It is proved that in the understanding of Jeremiah (whose student Barukh ben Neriah is credited with bringing the study of Torah to Babylonia) moving objects from a private to the public domain is a violation of biblical law. This supports the interpretation of Ex. 36:6.
Rebbi Mana said it without attribution\textsuperscript{21}; Rebbi Abin in the name of Rebbi Johanan: We did state two principles which do not compare. “There are two kinds of oaths which are four kinds”; one has to bring four sacrifices\textsuperscript{22}. “There are two kinds of appearances of skin disease which are four kinds”; one has to bring two sacrifices\textsuperscript{23}. Rebbi Eleazar in the name of Rebbi Abin\textsuperscript{24} explained it otherwise: “There are two kinds of oaths which are four kinds” was said by Rebbi Aqiba; “there are two kinds of appearances of skin disease which are four kinds” by Rebbi Ismael\textsuperscript{25}. Rebbi Haggai asked before Rebbi Yose: why do I need to follow Rebbi Ismael? Does it not come even following Rebbi Aqiba? Knowing and forgetting about impurity of the Sanctuary is the same as knowing and forgetting about impurity of sancta\textsuperscript{26}. He told him, does not Rebbi Ismael have forgetting impurity and forgetting the Sanctuary, and we want to follow Rebbi Aqiba\textsuperscript{27}?

Sometimes there is forgetting impurity and forgetting the Sanctuary but he is liable for only one sacrifice\textsuperscript{28}. How is this? If one became impure, realized it, then forgot about impurity, entered the Sanctuary, and left; then he became aware. Here is forgetting impurity and forgetting the Sanctuary but he is liable for only one sacrifice\textsuperscript{29}. Sometimes there are many forgettings of impurity and many forgettings of the Sanctuary but he is liable for only one [sacrifice]. How [is this]\textsuperscript{30}? If one became impure and realized it, then forgot and while being oblivious of impurity entered the Sanctuary and left; then he became aware\textsuperscript{31}. He said, there is no sacrifice due for this impurity. Again he became impure and realized it, then forgot and while being oblivious of impurity entered the Sanctuary and left even several times; in the end he
became aware. Here are many forgettings of impurity and forgettings of the Sanctuary but he is liable for only one [sacrifice].

21 He did not ascribe the following remark to R. Johanan or any other earlier Amora.

22 Mishnah 3:1, explicit in Sifra Hovah (Wayyiqra 2) Parashah 9(8). For the four cases enumerated in Note 1, R. Aqiba requires four separate sacrifices. R. Ismael infers from the forward-looking formulation of the verse that only future-directed oaths can trigger liability for a sacrifice. According to him, for separate oaths in the same period of oblivion at most two sacrifices may be due.

23 The reference to skin disease also is in a difficult Genizah text (G, L. Ginzberg, Yerushalmi Fragments from the Genizah, New York 1909, p. 264 ff.) but it cannot be correct. The purification ceremony of the healed sufferer from skin disease is independent of the particular diagnosis by which he had been declared impure and the number of sacrifices due solely depends on his financial ability. The sequel shows that one has to read “there are two kinds of awareness of impurity which are four kinds,” the second clause in the Mishnah.

24 R. Abin mentioned at the start of the paragraph is R. Abin the son, head of the Academy of Tiberias at the time of R. Mana in Sepphoris. The reading “R. Eleazar in the name of R. Abin” (In G: “in the name of R. Abun”, at a second occurrence “R. Eliezer ben R. Abun”) is impossible since R. Abin (Abun) the father lived a generation and a half after R. Eleazar. As already recognized by R. David Fraenckel (Qorban Ha`edah ad loc.) one must read “R. Eleazar bar Abinna”, a third generation Galilean Amora.

25 The Tanna of the Mishnah is not inconsistent in his use of parallel expressions but the two parallel sentences represent two different tannaïtic positions.

26 Since Mishnah 2:1 explains that even R. Aqiba can hold that “there are two kinds
of awareness of impurity which are four kinds” only if he distinguishes between awareness of impurity and awareness of the Sanctuary, there seems to be a possibility following him to require a sacrifice for infringing on the purity of the Sanctuary when there was awareness of impurity but oblivion of the Sanctuary.

27 Only R. Ismael requires a sacrifice both for forgetting impurity of sancta and forgetting the Sanctuary (Mishnah 2:6). R. Haggai’s inference is incorrect; R. Aqiba will not require a sacrifice in his case.

28 Even following R. Ismael.

29 There is no guilt attached to being impure. Guilt by impurity is incurred only if either the impure person enters the Sanctuary or eats from sancta. In the case in question there was only one forgetting; there is only one sacrifice required.

The sentence is missing in G.

30 Text of G והיה.

31 There is only one oblivion and only one sacrifice.

The sentence is missing in G.

32 At the first occasion, he was aware of the Sanctuary but he thought that for his kind of secondary impurity the Sanctuary was not forbidden. Then he entered several times while forgetting about the Sanctuary. Finally he realized his error concerning both impurity and Sanctuary. R. Ismael will agree that only one sacrifice is possible.
There are two kinds of appearances of skin disease which are four kinds.  
Rebbi Yose said, Joshua the son of Rebbi Aqiba asked Rebbi Aqiba. He said to him, why did they say, 'There are two kinds of looks of skin disease which are four kinds'? He answered him, if not so, what should they have said? He said to him, they could have said 'starting with eggshell and stronger it is impure.' He said to him, to tell you that anybody not expert for them and their names may not see skin lesions.

From where that they can be joined one to the other? Rebbi Mana said, the Sages counted them as two and counted them as four. Just as two can be joined one to the other so also four can be joined one to the other. Rebbi Eleazar in the name of Rebbi Abin: If it can be joined to what is not of its kind, so much more of its own kind. Rebbi Yose ben Rebbi Bun said, it is not written "they will be" but "it will be". This teaches that they cannot be joined one to the other. Hizqiah stated: It is not written "skin diseases" but "skin disease". This teaches that they cannot be joined one to the other.

He said to him, they could have said ‘starting with eggshell and stronger it is impure’ but should not have said, ‘there are two kinds of appearances of skin disease which are four kinds.’ He answered him, it teaches that they are not one superior to the other. Could they not be one superior to the other? If you say so, you would have said the darkened one is impure, the very darkened is impure. But the Torah said, behold, the diseased spot darkened. The darkened one is impure but the very much darkened is pure. It follows what Rebbi Hanina said, it is comparable to two kings and their two lieutenants. One king is greater then the other king, one lieutenant is greater than the other lieutenant. But the first one’s lieutenant is not greater than the other king. Samuel said, it is comparable to two kings and two of
their ambassadors. One king is greater then the other king, one ambassador is greater than the other ambassador. But the first one’s ambassador is not greater than the other king. Rebbi Hanina in the name of Rav (Ahā) [Ada] bar Ahawa: A king, and his army commander, and the Arghabeta and the Head of the Captivity. Rebbi Eleasar ben Rebbi Yose said before Rebbi Yose: The Mishnah implies that one is no greater than the other. If s’et whose very darkened spot is pure has a second color, the shiny spot, whose very darkened spot is impure, certainly will have a second color. He answered him, look at what you are saying. It has a second degree; should it not also have a third? What causes you to say that the very white spot, whose very darkened spot is impure, is the s’et? The kind of s’et is like eggshell.

This is s’et. This is the shiny spot. Sappahat is secondary to the shiny spot. [The diseased spot’s] look is deepened, secondary to s’et. What is the etymology of s’et? Elevated. As the shadow looks elevated compared to the sunny spot. What is the etymology of deepened? It is deep, as the sunny spot looks depressed compared to the shadow. What is the etymology of sappahat? Adjunct. As it is said, “adjoin me please to one of the priesthoods,” etc.” Rebbi Eleazar said, these are the words of Rebbi Ismael and Rebbi Aqiba. But the words of the Sages are that s’et and the shiny spot are one. Sappahat is secondary to either one. The Mishnah says so: “Mispahat is turned into s’et or strong mispahat.”

33 Tosephta Nega’im 1:1, Babli ševuot 6a.
34 In contrast to the three similar statements in the Mishnah, this one does not seem to have legal implications.
35 While white spots on one’s skin in general are harmless (Lev. 13:38-39), if they contain discolored hair they potentially are sources of impurity. This is characterized in Lev. 13:2 as “s’et, adjoint, or shiny spot” which is read as “s’et, shiny spot, or one of their adjoints”. It is indicated that the Cohen has to determine the nature of the impurity but no details are given, possibly to reserve diagnosis to priests. The details therefore are left to tradition. In Mishnah Nega’im 1:1, “shiny spot” is defined by R. Me’ir as color of fresh snow, s’et as color of eggshell (or the color of the membrane enclosing a hard boiled egg.) These colors are characterized as appearing as depressions on normal skin (Lev. 13:3). There are secondary forms for which the spots do not appear as if depressed (Lev.
These are described as the color of whitewash used in the Temple and that of white wool. The Sages disagreeing with R. Meïr declare eggshell as a secondary color. Since in the Tosephta eggshell is treated as secondary color, R. Meïr cannot represent the teachings of R. Aqiba in this case.

In G there is an added sentence which cannot be reconstructed.

Since the colors are not described in the Torah, the uninitiated lacks the means of determining purity and impurity.

A discoloration cannot imply impurity unless it contain an inscribed square of the size of half a Cilician bean; this is defined as \( (36 \text{ hairwidths})^2 \). The spot does not have to be of uniform color.

Since they are mentioned together in one verse.

If the verse implies that spots classified as \( s\'et \) and “shiny spot” are to be combined then certainly a shiny spot and one of lesser intensity are one and the same.

This contradicts everything we know from parallel sources, in particular the otherwise exact parallel in \( Sifra \ Tazria\), Para\( \text{šat} \ Nega‘im, \) Pereq 1(4) which reads \( אולנד \) ו\( הדף \) מ\( י\)י \( ו \)י \( ת \)י \( ב \)נ \( ה \)י \( ר \)י \( מ \)י \( ל \)י. \( This teaches that \)they can be joined one to the other.

Already D. Fraenckel in the 18th Century recognized that under the influence of Greek the \( h \) sound was lost and there was no difference in sound between \( ו\)י\( י \)י and \( י\)י\( ר \)י.

Again, read “they can”. Since the verse mentions three different diseases, the singular implies that for matters of purity all three are one.

A second version of the discussion between R. Aqiba and his son, not recorded elsewhere.

One cannot say that the color of fresh snow, which is blinding in bright sunlight, is the same as eggshell, but that for the rules of impurity both are equal and the relation of the color of snow to whitewash is equal to the relation between eggwhite and white (unbleached) wool.

Lev. 13:6. Since even for a darkened spot there are conditions which have to be satisfied before the sufferer from skin disease is declared pure, it follows that the change of color alone is not sufficient.

Babli 6b.

\( \alphaπαρχος \), lieutenant, proconsul, legatus, the second in command. The decreasing order of brightness is snow, eggshell, whitewash, white wool.

He thinks that the secondary colors are much darker than the primary ones.

The reading in parenthesis is that of the ms., the one in brackets that of G. While Rav Ada bar Ahawa (in the Babli Rav Ada bar Ahavah) is well attested to in both Talmudim, a Rav Aha bar Ahava is not otherwise known.

Probably the high Sassanid official mentioned in Greek sources as \( \alphaργαστήρ \), a Persian word “commander of a fort.”. The word is discussed at length by Geiger in \( Additamenta ad \) librum Aruch Completum, pp. 27b-28b.

The problem is what combines with what for impurity. It is clear from the biblical text that the spots in the original color combine, also that \( baheret \) and \( s\'et \) combine. If one would establish a hierarchy of brightness as the parables indicate and \( s\'et \) was less than \( baheret \), a combination of \( baheret \) with its secondary color would be a
combination of degrees 1 and 3, which we had excluded by a previous argument. Therefore s’et and baheret must be coordinate, not subordinate.

51 Sifra Tazria’, Parašat Nega’im, Pereq 1(4). A parallel text from another source is in the Babli, 6b.

52 Lev. 13:3.

53 IS. 2:36.

54 Since the word is placed between the two expressions.

55 Mishnah Nega’im 7:2. מטפת is biblical equivalent of מתפתa (Lev. 13:6,7) used both for impure and pure spots, thereby validating the distinction between deeper and much deeper colors.

Mishnah 2: In any case56 where there is knowledge at the start and knowledge at the end but forgetting in between there is an increasing or decreasing [sacrifice]57. If there was knowledge at the start but no knowledge at the end, the ram whose blood in brought inside58 and the Day of Atonement59 suspend until it becomes a certainty for him and he brings an increasing or decreasing one60.

56 This refers to violations of the laws of purity (Note 2). A sacrifice to atone for such a violation, either by entering the Sanctuary in a state of impurity or eating sacra in such a state, is possible only if the violation occurred while the perpetrator was oblivious of his state (Lev. 5:2-3). This implies that at some earlier time he was aware of his state. If he never remembers, clearly he has no occasion to bring a sacrifice.

57 Depending of the perpetrator’s wealth as explained in Lev. 5:1-13.

58 Lev. 16:15-16.

59 If there is no Temple, the Day of Atonement protects the perpetrator from judgment by the Heavenly Court.

60 The Day of Atonement suspends but does not eliminate the obligation; there is no statute of limitations.
From where that we require knowledge at the start and at the end but forgetting in between? The verse says, *it was forgotten, it was forgotten* two times; this implies that he had knowledge at the start and at the end but forgetting in between. So far for Rebbi Aqiba; following Rebbi Ismael? For Rebbi Ismael [argues] like Rebbi. As Rebbi said, *it was forgotten by him,* this implies that he knows. “But he knew,” there is knowledge two times. Hence Rebbi Ismael [argues] like Rebbi, and Rebbi like Rebbi Ismael. This comes even according to Rebbi Aqiba; it is the same for knowledge and forgetting about the impurity of the Sanctuary as for knowledge and forgetting about the impurity of sancta. But some want to understand it from the following: *He knew and felt guilty.* Was it not already said, *he became impure and felt guilty*? But if it does not refer to knowledge at the beginning, let it refer to knowledge at the end.

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61 Babli 4a.
62 Lev. 5:2,3.
63 In Babylonian sources [Babli 14b, Sifra Hova (Wayyiqra 2) Pereq 12(7)] this is consistently attributed to R. Ismael. The difference between the two is that R. Aqiba considers every stylistic variation a change in meaning whereas R. Ismael holds that “the Torah is written in the manner of common speech.”
64 The first quote is from the verse about human impurity, the other about impurity from extra-human sources. While it was argued before that one can only forget what one knew, the knowledge explicitly required in v. 3 must be explicit, it cannot have been unconsciously absorbed.
65? But if it does not refer to knowledge at the end, let it refer to
knowledge at the beginning. They objected: Is it not written, or his transgression came to his knowledge, he has to bring? Then if it does not refer to knowledge at the beginning, let it refer to knowledge at the end! Explain it as referring to those who are obligated for certain purification and reparation offerings for which the Day of Atonement has passed who have to bring after the day of Atonement, while those obligated for suspended reparation sacrifices are no longer liable. The verse says, or his transgression came to his knowledge, he has to bring even after the Day of Atonement.

65 Since any obligatory offering cannot be brought voluntarily, the fact that a sacrifice is commanded implies that the person can prove it is obligatory, i.e., he knows that a sin has been committed. Therefore the mention of “knowledge” in the verse cannot refer to his knowledge at the moment he offers the sacrifice.

66 And the mention of forgetting must be interpreted as read by R. Aqiba here and R. Ismael in the Babli sources.

67 Lev. 4:23, about the purification offering of the prince. Purification offerings are for inadvertent sins; nowhere is prior knowledge and intermediate forgetting indicated. R. Bun’s argument would force the transfer of the rules for variable sacrifices to purification ones against all tradition.

68 A “suspended” reparation sacrifice is brought if the person suspects but is not sure that he has sinned (Lev. 5:17-18). If he then gains certainty that he has committed an inadvertent sin, a purification sacrifice is due if and only if he gains this knowledge before the next Day of Atonement. R. Bun’s argument is justified.

70 Yoma 8:6 (45b l. 47), Babli Keritut 25b.
And from where that it speaks only about the impurity of the Sanctuary and its sancta? He warned and punished about impurity and required a sacrifice about impurity. Since punishment and warning spelled out later on refer to impurity of the Sanctuary and its sancta, also when He made liable for a sacrifice it is about impurity of the Sanctuary and its sancta. Rebbi Eliezer ben Jacob says, since it says, I did not eat from it in my deep mourning, I could think that an Israel who ate tithe in deep mourning should bring a sacrifice. The verse says, from these. For some of these he is liable, for some of these he is not liable. I will exclude tithe which is not a deadly sin but will not exclude heave which is a deadly sin as it is said, they would die from it for they desecrated it. The verse says from these; for some of these he is liable, for some of these he is not liable. Or since there [one speaks about] heave, also here heave. But did you not learn it from foreign worship? Since foreign worship teaches about all transgressions in the Torah, to say that as foreign worship is special that one is liable for extirpation if done intentionally and for a sacrifice if done unintentionally. This excludes heave which only is a deadly sin.

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71 Babli 6b; Sifra Hovah (Wayyiqa 2) Pereq 11(9).
72 In Lev. 22:15-16, both warning and punishment are written for priests who would violate the purity of the Sanctuary and its sancta. For the laity the corresponding verses are Lev. 7:19-20. The sacrifice for violations in purity is mentioned in Lev. 5:2-3; one has to establish that no sacrifice is possible for violations of sancta which do not belong to the Sanctuary such as heave.
73 Deut. 26:14. The person who comes to eat his Second Tithe at the place of the Sanctuary has to make a declaration that he followed all the rules; in particular that he did not eat of it while in “deep mourning”, occupied in burying a close relative. Second Tithe has to be eaten in purity but no sanction for violation of its purity is spelled out anywhere in the Pentateuch.
74 Deut.14.
75 Lev. 5:4. Prefix נ always is read as partitive, “some but not all.” Since it is not spelled out which infractions of the laws of impurity (or of testimony, or oaths) are included, and which are excluded, the detailed rules are left to rabbinic interpretation. Babli 33b.
76 Lev. 22:9. First Tithe (of which heave of the tithe was separated) is totally profane in the hand of the Levite. Second Tithe has to be eaten in purity at the place of the Sanctuary but there is no penalty for violation of its purity. But heave has to be eaten by the Cohen in purity and violation of
its purity is a deadly sin.

77  The verse mentioned in Note 76.
78  The sacrifice atoning for inadvertent idolatry is declared paradigmatic for all sins in Num. 15:22.
79  The sacrifice is spelled out in Num. 15:22-29; extirpation in vv. 30-31. Babli  Sabbat 69a.
80  But no extirpation is mentioned for violating purity of heaves.
81  Rebbi Hanina said before Rebbi Mana: Did you learn this from foreign worship? Then one should learn from foreign worship that for everything one needs one knowledge! He told him, foreign worship requires a fixed value [sacrifice] but the impurity of the Sanctuary and its sancta an increasing or decreasing one. One cannot infer about a fixed value [sacrifice] from an increasing and decreasing one, nor for an increasing or decreasing from a fixed value one. How did you understand to say that the verse speaks about impurity of Sanctuary sancta? It is said here an impure animal and it is said further on an impure animal. Since an impure animal mentioned there is about impurity of Sanctuary sancta, so an impure animal mentioned here is about impurity of Sanctuary sancta. Not only Sanctuary sancta; from where the impurity of the Sanctuary? The verse says: his impurity is on him. Impurity of the body, not impurity of the meat. Rebbi says, he ate, his impurity is on him. Impurity of the body, not impurity of the meat. Rebbi Hyya says, sancta are mentioned in the plural but impurity is
mentioned in the singular. How can I uphold his impurity is on him? Impurity of the body, not impurity of the meat. Rebbi Meïr says, the verse only speaks of one from whom impurity separates. This excludes meat from which impurity does not separate.”

81 Read: Hinena.
82 Since neither prior awareness nor forgetting are mentioned as prerequisite for a sacrifice for unintentional idolatry (nor for any other sacrifice not depending on the sinner’s wealth) one would have to explain away the mention of prior awareness for infractions of the laws of purity.
83 Therefore the previous argument is invalid; one has to find another argument to exclude any sacrifice for violations of the sanctity of heave.
84 Lev. 5:2-3. Babli. 7a.
85 Lev. 5:2.
86 Lev. 7:21.
87 Babli Zevahim 43b. The question is whether a violation of the purity of the Sanctuary can be expiated by a sacrifice or whether any such violation requires the full ceremony of Lev. 16 describing the Day of Atonement.
88 Sifra Sav Perez 14(3-6), partially quoted in Zevahim 43b.
89 Lev. 7:20.
90 This is prohibited in Lev. 7:19.
91 Lev. 7:21.
92 A well-being offering is always mentioned in the plural, שולחן. It is argued that therefore a singular cannot refer to the sacrifice. The argument is unconvincing since the sacrifice is not called שולחן in the plural but שולחן in the singular. It also is unnecessary since in 7:20 עליע “on him” refers to the subject הקפוש “but the person”.
93 A person always can remove his impurity, for simple impurity by immersion (in a miqweh), for severe impurities by one of the prescribed rituals. Impure sacral meat must be burned (Lev. 7:19; it also loses its impurity by rotting but as long as it is meat it remains impure.)
If it is so, what does the Day of Atonement help him\(^95\)? Rebbi Yose ben Rebbi Bun said, the Day of Atonement acts for him as a suspended reparation sacrifice. In he died before the day of Atonement, the sin is in her\(^96\). After the day of Atonement it already was atoned for\(^97\).

\(^{98}\)“He shall atone for the Sanctuary from the impurities of the Children of Israel\(^99\), etc. In this aspect I have three impurities. The impurity of foreign worship as it is said, to defile My Sanctuary\(^100\). Sexual offenses as it is said, not to act in the rules of abominations\(^101\). Spilling of blood as it is said, do not defile the Land\(^102\). I could think that this ram atones for all these impurities, the verse says, from the impurities, not all impurities\(^103\). We find that the verse treated the impurity of the Sanctuary and its sancta separately; also here we treat only the impurity of the Sanctuary and its sancta separately\(^104\), the words of Rebbi Jehudah. Rebbi Simeon says, from its place it is decided, as it is said, he shall atone for the Sanctuary from the impurities of the Children of Israel, any impurity in the Sanctuary. I could think that this ram atones for these impurities, the verse says, and their crimes\(^99\). These are the rebellions\(^105\), for so it says, the king of Moab rebelled against me\(^106\).

\(^95\) This refers to the second part of the Mishnah. If at some time the impurity was known, the eventual obligation of a sacrifice is not eliminated by the day of Atonement. Then what is the effect of this day?

\(^96\) Num. 15:31. The feminine pronoun refers to וּפֶלְפֶלֶת “the breathing person”.

\(^97\) Even though an eventual obligation remains for the living person, the guilt has been atoned for.

\(^98\) Babli 7b, Sifra Ahare Pereq 4(1-3).

\(^99\) Lev. 16:16.

\(^100\) Lev. 20:3.

\(^101\) Lev. 18:30.

\(^102\) Num. 35:34, a misquote from memory.

\(^103\) Reading the prefix ו as partitive, cf. Note 75.

\(^104\) In his opinion, the Day of Atonement is exclusively for repairing any damage to the Sanctuary.

\(^105\) Intentional sins, intended as “breaking the yoke of Heaven”. There is no homily on תְּפִלָּת “unintentional sins” also mentioned in the verse.

\(^106\) 2K. 3:7.
Mishnah 3: If there is no knowledge at the start but there is knowledge at the end\textsuperscript{107}, the ram brought outside\textsuperscript{108} or the Day of Atonement\textsuperscript{109} atone as it is said, \textit{in addition to the atoning purification offering}\textsuperscript{110}; what the one atones for the other atones for. Since the one inside atones only on matters which were known\textsuperscript{111}, also the outside one should atone only on matters which were known.

\begin{itemize}
\item \textsuperscript{107} If there was no knowledge at the start and therefore no forgetting, there can be no variable sacrifice. But since the purity of the Sanctuary or of its san	extit{a} was impaired, a sacrifice is needed which, however, cannot be that of a particular person. It must be the people’s sacrifice.
\item \textsuperscript{108} The holiday purification offering of the Day of Atonement (Num. 29:11) which is treated following the rules of all holidays and is not mentioned in Lev. 16.
\item \textsuperscript{109} If there is no Temple.
\item \textsuperscript{110} Num. 29:11. The atoning purification offering is the one mentioned in Lev. 16:15.
\item \textsuperscript{111} Where there is awareness of violation of the rules of purity. For unknown violations see Mishnah 4.
\end{itemize}

Halakhah 3: “If there is no knowledge at the start,” etc. What can you see to say? Does the one inside suspend and the one outside atone, or the one
outside suspend and the one inside atone, or both of them suspend, or both of them atone?  

What about it? Rebbi Jacob bar Aha said, I saw something. Rebbi Simeon ben Laqish was asking before Rebbi Johanan and asked him, what are the differences in atoning? I do not know what he answered him. Rebbi Ze’ira said to him, maybe it is the following: How did you understand to explain it? About an impure person who ate pure meat, or a pure person who ate impure meat? The verse says: his impurity is on him. Impurity of the body, not impurity of the meat.

Or both of them atone? What about it? He should over it confess sins, these are intentional sins, their crimes, these are rebellions, their mistakes, these are unintentional sins. Then He said, he will atone. Rebbi Immi said in the name of Rebbi Simeon ben Laqish, the ram will carry all their sins, he grabbed intentional sins and left out unintentional sins, to indicate that just as intentional sins do not carry the obligation of a sacrifice, so those unintentional sins which do not carry the obligation of a sacrifice. And why did they come here? Rebbi Ila in the name of Rebbi Yasa, for suspension. Would it be understood to suspend for those who eat abominations and crawling things? Rebbi Samuel in the name of Rebbi Ze’ira: Their mistakes, their mistakes. Since their mistakes mentioned there are those which carry the obligation of a sacrifice, also their mistakes mentioned here are those which carry the obligation of a sacrifice. This excludes intentional sins which do not carry the obligation of a sacrifice. What is left out by the ram brought inside the Day of Atonement suspends. What did it leave out? If there is no knowledge at the start but there is knowledge at the end.

112 Since there are two purification sacrifices brought on the Day of Atonement, one (Lev. 16:15 ff.) whose blood is sprinkled on the gobelin separating the Temple Hall from the Holiest of Holies and the incense altar (Ex. 30:10), and one (Num. 29:11) whose blood is sprinkled on the large altar in the Temple courtyard. The question is whether each of these has a separate function or whether the day requires a double sacrifice for all its functions.

113 Halakhah 2, Note 90. These are known differences in the power of atonement but have nothing to do with the Day of Atonement.


115 Lev. 16:22.
In fact only rebellions are mentioned to be carried to the desert even though three kinds of transgressions were put on the scapegoat’s head.

117 It is not that intentional sins not carry an obligation of a sacrifice but the sinner is prohibited from offering one (Num. 15:30-31.) Unintentional sins only require a sacrifice if the corresponding intentional sin is punishable by extirpation (Mishnah Keritut 1:2), others require repentance and atonement by the Day of Atonement. Babli Keritut 25b.

118 The commentators differ in what this means. The Day of Atonement suspends punishment to give the sinner time for repentance (Qorban Ha`edah) or the statement refers to the Mishnah that the Day of Atonement eliminates the obligation of a suspended sacrifice (Pene Mosheh). The sequel shows that neither of these alternatives applies but that the first alternative considered in the introductory paragraph applies; one purification sacrifice suspends punishment for certain categories of sins and the second atones.

119 Eating non-kosher animals is a sin (Lev. 11, Deut 14) but not one leading to extirpation. Therefore it is not subject to atonement by sacrifice.

120 The first מֶזֶּה is in Lev. 16:21 and refers to the scapegoat and its limited power of atonement, the second one to the final statement Lev. 16:34 which declares that all mistakes are atoned for on that day.

121 This justifies the Mishnah; both actions of the Day of Atonement are needed. Babli 10a.
ate impure. Rebbi Meir says, the atoning of all rams is the same, about the impurity of the Sanctuary and its sancta.

**Mishnah 5:** Rebbi Simeon used to say, the rams of the holidays atone for the pure person who ate impure; those of the holidays atone for where there is no knowledge either at the start or at the end, and those of the Day of Atonement where there is no knowledge at the start but there is knowledge at the end.

122 Undetected infractions of the laws of purity. Mishnaiot 4-6 are reproduced in Sifra Ahare Perq 5(2-50).

123 Num. 28:15,22,30; 29:4,16,19,22,25, 28,31,34,38. These are public sacrifices; they atone for damage to public institutions.

124 Impure sacrificial meat or cereal.

125 Mishnah 3.

126 28,31,34,38. These are public sacrifices; they atone for damage to public institutions.

127 Impure sacrificial meat or cereal.

128 Impure sacrificial meat or cereal.

129 Impure sacrificial meat or cereal.

130 Impure sacrificial meat or cereal.

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**Halakhah 4:** “But about where there is no knowledge,” etc. **Halakhah 5:** “Rebbi Simeon used to say,” etc. Rebbi Eleazar in the name of Rebbi Hoshia: The reason of Rebbi Jehudah is and one goat’s ram sin offering for the Eternal. This ram atones for a sin known only to the Eternal. I have not only the ram of the Day of the New Moon; from where the rams of the holidays? Rebbi Ze’ira said, and a ram, the copula adds to the prior subject. Rebbi Ze’ira and Rebbi Eleazar in the name of Rebbi Hoshia, Rebbi Jacob bar Aha in the name of Rebbi Johanan: He gave it to you to lift the sins of the congregation. Where do we hold? If about Nahshon’s ram,
it atoned for his tribe. If about the ram of the Day of (Atonement)\textsuperscript{131}, there is nothing similar in later generations\textsuperscript{132}. But we must deal with the ram of the Day of the New Moon. What about it? It is said here “lifting sin” and it is said there “lifting sin”, \textit{Aaron shall lift the sin of the sancta}\textsuperscript{133}. Since there it is the sinfulness of the offerings not the sins of the offerers, also here it is the sinfulness of the offerings not the sins of the offerers\textsuperscript{134}. What did you see to say, “for the pure person who ate impure”, maybe we should say for the impure person who ate pure? Rebbi Yose ben Rebbi Bun said, Rebbi Jehudah splits the argument of Rebbi Meïr; Rebbi Simeon splits the argument of Rebbi Jehudah\textsuperscript{135}. Rebbi Johanan\textsuperscript{136} agrees that the ram brought inside does not atone; rather it suspends. This parallels Rebbi Jonah in the name of Rebbi Ze’ira, \textit{he shall make it a purification offering}\textsuperscript{137}. He fixed it for suspension, that it could not be changed\textsuperscript{138}.

\textsuperscript{126} Num. 28:15, the sacrifice of the Day of the New Moon. (The verse is quoted not quite correctly.) The root יוש in \textit{pā’al} means “to sin” but in \textit{pi’el} “to cleanse, to restitute, to purify.” The word \textit{פָּתָם} “purification” can also mean “sin” (Ex. 34:9). Here it is interpreted in both senses. Babli 9a.

\textsuperscript{127} In \textit{Sifry Deut.} 145, the example given is that of a unknown grave which makes everybody stepping over it impure; the impure person never could know of his impurity.

\textsuperscript{128} In all occurrences (Note 123) the sentence starts with \textit{E} which also could have been left out. This is read as referring to the first case. Babli 9b.

\textsuperscript{129} Probably “and” should be replaced by a comma.

\textsuperscript{130} Lev. 10:17, referring to the inauguration of the Tabernacle which was on the first of Nisan. On that day, three purification sacrifices were offered. 1º A calf, special to this day. 2º A ram for the Day of the New Moon. 3º A ram by the chief of the tribe of Jehudah (Num. 7:16). The verse does not spell out to which of the three it refers.

In the Babli 9b, the entire argument is quoted as explanation of R. Simeon’s statement; also quoted Zevahim 101b.

\textsuperscript{131} Read: Inauguration.

\textsuperscript{132} The reference is to the calf (Note 129, 1º) which only in this case served as public purification offering; in all other cases the sacrifice is a ram. Since the verse is in the singular, it follows that only one purification offering was burnt; the other two were eaten [\textit{Sifra Šemini Pereq} 2(2)]. It is characterized as “given to lift the sin of the congregation”; this is asserted only of the New Moon’s Day ram. It follows that the calf of the Inauguration was particular for the Sanctuary and the priests, Nahshon’s for his tribe.

\textsuperscript{133} Ex. 28:38.
134 It is explicitly stated in the verse that the High Priest’s diadem is only effective to cure unknown disabilities of sacrifices, not of humans. In the Babli, Menahot 25a, this is the final answer by the fifth Cent. Rav Ashi after a lengthy discussion which also quotes R. Zera (Ze’ira) with a completely different suggestion which is rejected.

135 R. Jehudah accepts the argument of R. Meïr but excludes the rams of the Day of Atonement from the group. R. Simeon accepts the argument of R. Jehudah but excludes the ram of the Day of the New Moon.

136 One may conjecture that originally the text read י’י meaning “R. Jehudah” which was misread by a copyist as “R. Johanan.” (In Babli texts, י’י has both meanings with about the same frequency.)

137 Lev. 16:9. One would have expected the sentence to readוּ כְּרוֹת אֵלֶּה פְּרָיָר בָּא יְפֹרְשֵׂה פְּרָיָר יָלַד יַעֲקֹב. Then רָמָא וְקָשֶׁה would have referred to the ram and meant “purification offering.” But the clause כְּרוֹת קָשֶׁה “he turns it into כְּרוֹת” defines the word as “unintentional sin.” The ram whose blood is brought into the Sanctuary turns intentional into unintentional sins.

138 It cannot be used for any other purpose. If the companion scapegoat would die before it is slaughtered, it could not be used for any other purpose; it must be sent grazing until it develops a bodily defect or becomes too old to be used as a sacrifice, then be sold and its value used to buy other sacrifices. Sifra Ahare Pereq 2(5).

A ram which was not brought on the holiday should be brought on the Day of the New Moon. If it was not brought on the Day of the New Moon it should be brought in the future since from the start public sacrifices were dedicated only to be brought onto the outside altar.  

139 Tosephta 1:1. It is forbidden to bring profane animals into the Sanctuary precinct. Therefore all animals brought into the Sanctuary have to be dedicated beforehand. One is careful to make only the most general dedication in order not to lose the use of the animal if something goes wrong.

But did not the Day of Atonement already atone? Rebbi Mana said, since it is written, the pilgrimage of Unleavened Bread, the pilgrimage of...
Weeks, and the pilgrimage of Tabernacles\textsuperscript{141}, it is as if they all atoned one atonement. Rebbi Bun said, since they all atone for the impurity of the Sanctuary and its sancta, it is as if they all atoned one atonement.

140 Since the Day of Atonement leaves a clean slate, why does the following holiday of Tabernacles need another 8 purification sacrifices?

141 Deut. 16:16. Since the other two holidays are far removed from the Day of Atonement, the sacrifices are needed.

Rebbi Jacob bar Aha in the name of Rebbi Yasa: The one who stands before the Ark on New Year’s holiday does not have to mention the New Moon\textsuperscript{142}. Rebbi Aha bar Pappus said, it was stated thus: \textsuperscript{143a}\textsuperscript{a}“The one who stands before the Ark on New Year’s holiday in the morning, the House of Shammai say, he prays eight [benedictions]\textsuperscript{144}, but the House of Hillel say seven. For musaf\textsuperscript{145}, the House of Shammai say ten, but the House of Hillel say nine.” Should he not say eleven\textsuperscript{146}a? Rebbi Yose said, where do they disagree? In a matter which needs a separate benediction. But here even on a weekday he simply includes it\textsuperscript{147}. So he should mention it in “Service”\textsuperscript{148}. Rebbi Yose asked, since the two rams of New Year’s day come because of the New Moon, why do you say that he does not have to mention the New
Moon\textsuperscript{149}? Rebbi Yose ben Rebbi Bun said, does Rebbi Abba bar Mamal\textsuperscript{150} not ask correctly? As it was stated: “The two lambs of Pentecost\textsuperscript{151} and the two rams of New Year’s Day.” If the first atoned, what does the second atone for? For impurity that happened between them.\textsuperscript{152} Is that not Rebbi Simeon’s? And Rebbi Simeon splits atoning\textsuperscript{153}. But if both of them were for the New Moon? Rebbi Abba Mari said, you cannot do that, since it is written, \textit{in addition to the elevation offering of the month}\textsuperscript{154}. In addition, from what we have stated, “twelve for the twelve months of the year.”\textsuperscript{155} A patrician stood before the Ark and did not mention the New Moon; they praised him.\textsuperscript{156} Rav Hoshiaia asked: think of it, if they slaughtered both of them simultaneously? What impurity happened between them? Rebbi Bun said, if all of Israel are proper, would they not bring what the Torah prescribed for them\textsuperscript{157}?

\textsuperscript{142} The reader stands before the Ark. Before the invention of printing, he was the only one having a prayer text before him and was supposed to recite all prayers aloud. Except on holidays, the congregation were supposed to recite the Šema` and the `Amidah by heart.

In the main prayer, the `Amidah, in all four times (evening, morning, musaf, afternoon) one does not mention that New Year’s Day also is New Moon Day. (In the Ashkenazic rite, in which the verses describing the sacrifices of the day are recited, the New Moon is mentioned in the quote of Num. 29:6.)

\textsuperscript{143} A related text in Tosephta Berakhot 3:12.

\textsuperscript{144} The three beginning and the three final benedictions required daily, one additional benediction for the Sabbath and one for the holiday. The House of Hillel require that the middle benediction refer both to holiday and Sabbath.

\textsuperscript{145} Every New Year’s Day the musaf prayer contains three middle benedictions, one to praise God’s Kingdom, the second to His sitting in judgment over the world, the third remembering the shofar blowing at Mount Sinai and the expectation of the shofar blowing announcing the coming of the Messiah. In this version, everybody agrees that the holiday is mentioned in the declaration of God’s Kingdom; the only difference between the Houses of Shammai and Hillel is that the former require a separate benediction for the Sabbath whereas the latter hold that the Sabbath is mentioned together with the holiday in the fourth benediction. None of the parties mentions the New Moon.

\textsuperscript{146} An extra one for the day of the New Moon.

\textsuperscript{147} In the morning, afternoon and evening prayers on a Day of the New Moon there is no additional benediction; the New Moon is mentioned in an insert in the first of the last benedictions, “Service”, which is a prayer for the restoration of the Temple service.
with a supplication that our prayers be accepted in lieu of sacrifices.
148 The formula used on the other 11 months of the year. The current text originates from the middle benediction of musaf of New Year’s Day.
149 While only the elevation offering of the Day of the New Moon is mentioned in the list of sacrifices for New Year’s Day (Num. 29:6), the traditional interpretation includes also the day’s purification offering (Num. 28:15). Then one should include a mention of the New Moon at least in “Service”.
150 It seems that one has to read “R. Yose” since R. Ba bar Mamal is not mentioned in the Halakhah.
151 Read: “the two rams of Pentecost,” one prescribed in Num. 28:30 for the holiday, the other in Lev. 23:19 to accompany the two leavened breads which introduce flour from the new harvest to the Sanctuary. This is a statement of R. Simeon in Tosephta 1:2.
152 Cf. Qiddušin 2:7, Note 166.
153 The answer is not acceptable since the baraita is attributed to R. Simeon who in Mishnah 5 explained that different categories of purification sacrifices atone for different categories of impurity. His opinion about the ram accompanying the two leavened loaves has not been recorded.
154 Num. 29:6. Since the verse makes a clear distinction between the sacrifices for the Day of Remembrance (New Year) and the New Moon, certainly for R. Simeon they must have different purposes.
155 Tosephta 1:2, a statement of R. Simeon about 32 public purification sacrifices to be brought every year. There is exactly one for each month.
156 When only the outline of the topics of benedictions were given but no prayer text were prescribed.
157 He objects to the entire line of reasoning. The purification sacrifices of the holidays are given “to atone for you” (Num. 28:22,30; 29:5,11), but no provision is made to ascertain whether atonement is actually needed. This implies that they must be brought even if not needed for atonement. The same applies to the other public offerings for which the purpose is not explicitly stated.

 Mishnah 6: They asked him\textsuperscript{157}, could they be brought one for the other\textsuperscript{158}? He told them, they may be brought. They asked him, since their atoning is not the same\textsuperscript{159}, how can they be brought one for the other? He told them, all of them serve to atone for the impurity of the Sanctuary and its sancta\textsuperscript{160}. 
The dissenting Sages asked R. Simeon following his statement in Mishnah 5.

For example, a ram was dedicated as scapegoat for the Day of Atonement but escaped, another ram was used, and afterwards the original ram was recaptured. Since it had been dedicated, it could not revert to profane status. May it be used as purification offering on the next holiday?

As R. Simeon stated in Mishnah 5.

The dedication prepares it to atone for impurities, to fulfill a biblical commandment. The particular instances of atonement are not on the mind of the person making the dedication; therefore, the ram may be used on all occasions where Scripture uses similar wording. It is noted in the next Halakhah that a dedication for sacrifice, whatever it will be, is sufficient.

Gimmee ishkevron yeha kol ishro vei yikrok dbir hameim
Mishnat dibri vei shemuro yi mishnut dbir hakemim mishnut veimun.
Mishnor yeha yskerov yeha bna.
Bishpot vnishvot haaleh kishokto shukt meir.
Yi mishnut yeha yskerov yeha bna.
Kamor vei yisroel
Shayn kibennot hameim kevnei yaleh kevohu.
Kamor vei yitir vei nekhol.
Lishem ashamed yeha shava korb.
Lishem hama kibenu mishkhu roshunu.

Halakhah 6: “They asked him, could they be brought one for the other,” etc. Rebbi Johanan said, the words of the Sages [imply] that one may change; the words of Rebbi Simeon [imply] that one may not change\(^\text{161}\). The words of the Sages [imply] that one may change, and you say “could they be brought one for the other”\(^\text{162}\)? They objected to him according to his argument\(^\text{163}\). According to your argument, since you say that one may not change, could they be brought one for the other? Rebbi Yose said, since public sacrifices are designated only by use\(^\text{164}\). Rebbi Yudan said, it was stated thus\(^\text{165}\): “For the purpose of the sacrifice for which it is brought it was sanctified from the beginning.”

\(^\text{161}\) It may be assumed that the Sages follow R. Meir, for whom all public purification sacrifices have the same purpose. Then it is obvious that the particular day for which an animal is brought should not have any relevance for the substance of the sacrifice. But for R. Simeon (and also R. Jehudah) there should be a difference; even if in an emergency R. Simeon permits using a ram on the next available occasion, he might forbid intentional change.

\(^\text{162}\) Since for the Sages the answer obviously is positive, why does it have to be asked at all?

\(^\text{163}\) They asked R. Simeon; for themselves the answer was clear.

\(^\text{164}\) Animals dedicated for public sacrifice are dedicated “for any public sacrifice where they might be needed.” The exact kind is
determined only at the time of slaughter. This follows R. Yose (the Tanna) in Mishnah Zevahim 4:6: “Even if somebody did not intend [any of the specific uses] it is qualified; it is a stipulation by the court that the thought is determined by the officiating priest.” Since the officiating priest can disqualify a sacrifice by thought, e.g., the intention to eat the sacrificial meat outside the allotted time or place, he also qualifies the sacrifice by his thought if the animal had been dedicated as sacrifice. For a private sacrifice this implies that even if the owner had a disqualifying thought but the officiating priest served having the correct thought, the sacrifice is qualified. The Babli agrees as explained in Maimonides’s Mishnah Commentary ad loc.
Day of Atonement to atone an atonement which is not theirs\textsuperscript{168}. He told them, all of them serve to atone for the impurity of the Sanctuary and its sancta\textsuperscript{125,160}.

\textsuperscript{166} R. Simeon (ben Iohai).

\textsuperscript{167} He disagrees with the Tanna of Mishnah 5. R. Simeon does not hold that the different kinds of public purification sacrifices are for different kinds of offenses but that there are different kinds of effectiveness, the power of the sacrifice of a more holy day is strictly greater than that of the day of lesser holiness.

\textsuperscript{168} Since the rams of the Day of Atonement were destined for two additional powers not in those of the New Moon.

\textbf{Halakhah 8:} “They said to him, did not the teacher use to say,” etc.

Rebbi Yose the Southerner said before Rebbi Jonah: Would it not have been necessary to state, if it is so then those of the Days of the New Moon could be brought on the Day of Atonement since one increases holiness but one does not diminish; but those of the Day of Atonement cannot be brought on the Days of the New Moon since one does not diminish holiness\textsuperscript{169}. Rebbi Eleazar in the name of Rebbi Bun\textsuperscript{170} explained it by another explanation\textsuperscript{171}: if it is so then those of the Day of Atonement could be brought on the Days of the New Moon, for included in their atoning is the atoning of the Days of the New Moon\textsuperscript{172}, but those of the days of the New Moon cannot be brought on the Day of Atonement, for they atone only their atonement. For if anybody
ate five olive-sized pieces of fat and dedicated four sacrifices, being of the impression that he had dedicated five, did he atone? Or if he ate four olive-sized pieces of fat, dedicated five sacrifices, being of the impression that he had dedicated four, not so much more? And so Rebbi Simeon used to say, thirty-two rams are brought for the public every year. Thirty one outside, they are eaten. One inside which is not eaten. And the scapegoat. Twelve for the twelve months of the year. Eight on Tabernacles, seven on Passover, two on Pentecost, one for the day and one for the bread. One on New Year’s Day and one on the Day of Atonement.” When Moses heard this he said, it follows that anybody for whom the doubt of a transgression arises should bring all these sacrifices! Rebbi Tanhuma in the name of Rebbi Simeon ben Laqish: When the Holy One, praise to Him, said to Moses, he shall confess, inspired by he shall confess on it etc., he started and said, A Song of confession, 178 on it etc., he started and said, A Song of confession, inspired by he shall confess on it.

169 A general principle (cf. Bikkurim 3:3, Note 57; Yoma 3:8 41a l. 10, Megillah 1:12 72a l. 47, Horaiot 3:3 Note 151; Babli Yoma 12b). Since this principle cannot be overridden, it is an argument not for practice but against R. Simeon’s opinion that the sacrifices can be substituted one for the other and for R. Meïr’s that they cannot. The argument presupposes that the cumulation of cases for which the sacrifices atone indicates a higher state of holiness.

170 The name tradition is impossible. The second generation R. Eleazar cannot transmit in the name of the third generation R. Bun I or the fourth generation R. Bun II. Probably one should read: R. Bun in the name of R. Elazar or even R. Yose ben R. Bun in the name of R. Eleazar. Cf. Note 24. 171 To uphold the text of the Mishnah. Since the argument is directed against one made in the Academy of R. Jonah, of the last generation of Galilean Amoraim, it should be attributed to the absolutely last Amora R. Yose ben R. Bun.

172 He asserts that all purification sacrifices have the same status of holiness but their effectiveness depends on the intent of their dedication. One sacrifice atones for all instances for which it was dedicated but none for which it was not dedicated. He must assume that the dedication was for a purification sacrifice, not for “a sacrifice whichever it will be” since the only public sacrifices of rams are purification sacrifices including the scapegoat.

173 Assuming that he is obligated to bring five different sacrifices for five different inadvertent sins punishable by extirpation of which eating fat is the paradigm (cf. Horaiot 3:3). If he offered only four, one sin by necessity remains without atonement.

174 Automatically all sins are atoned for (even though one would expect the case never to happen since the owner of the
sacrifice is required to confess his sin while leaning with his hands on the head of the sacrifice (Lev. 4:29), and probably would detect his error.

175 Tosephta 1:2.

176 Some of the blood of the purification offering of the Day of Atonement is brought inside the Sanctuary; the rest has to be burned outside the Sanctuary (Lev. 6:23). All other purification sacrifices must be eaten by the priests, (Lev. 6:22).

177 A similar text in Midrash Tehillim 100. It is standard Galilean doctrine that the 11 Psalms 90-100 were composed by Moses (even Ps. 99!), not only Ps. 90 as indicated by its header. In the Babylonian tradition (transmitted by prayer texts) Moses was the author of Pss. 90-91 and the Sabbath of Ps. 92.

178 Lev. 16:21. This resolved Moses’s problem and informed him that his prior concern, that the slightest doubt might impose an unbearable financial burden on the sinner, was unfounded.

179 Ps. 100:1. Usually, one translates “a song of thanksgiving” since this is appropriate for the ḥit’atot sacrifice [Lev. r. 9(3)].

Mishnah 9: Intentional impurity of the Sanctuary and its sancta is atoned by the ram whose blood is brought inside and the Day of Atonement. The remainder of the transgressions mentioned in the Torah, minor or serious ones, intentional and unintentional, known and unknown, positive commandments and prohibitions, extirpations and capital crimes, the scapegoat atones.

180 Those that cannot be taken care of otherwise; for example, if a person intentionally ate impure sancta but was not duly warned beforehand. Then he cannot bring a sacrifice which is reserved for unintentional sins. He cannot be punished in court since he was not warned and therefore criminal intent cannot be established. The contamination of the Sanctuary and its sancta is removed by the Day of Atonement; whether the person’s guilt is removed without due repentance is a topic for the Halakhah.

181 This is reformulated in the Halakhah.
Halakhah 9: “Intentional impurity of the Sanctuary.” etc. That means it atones for intentional infractions and suspends for the unintentional.\(^{182}\)

183 Are not minor sins [positive commandments and]\(^{183a}\) prohibitions; are not serious ones extirpations and capital crimes\(^{184}\)? Rav Jehudah said, so is the Mishnah: “Minor or serious ones. Those minor ones, whether he committed them intentionally or committed them unintentionally\(^{186}\). Those intentional ones, whether he obtained knowledge of them or did not obtain knowledge of them\(^{187}\). The following are minor sins: positive commandments and prohibitions\(^{188}\). Serious ones, extirpations and capital crimes. Just as the ram whose blood is brought inside atones for intentional infractions and suspends for the unintentional\(^{189}\), the same holds for the scapegoat\(^{190}\).”

182 The purpose of the sacrifice is to safeguard the integrity of the Sanctuary. Therefore it has to repair all infractions which cannot be repaired otherwise, i. e., intentional infractions that cannot be prosecuted (for lack of eye witnesses or prior warnings). Since severe unintentional infractions (those if intentional would be punished by Divine extirpation or judicial execution) require a sacrifice, the public offering does not absolve the sinner from his obligation; it only suspends the damaging influence on the Sanctuary. The statement is incomplete since infractions for which the penalty is not spelled out in the Pentateuch (“simple infractions”) cannot be atoned for by a sacrifice and, if committed against the Sanctity of the Sanctuary or is sancta, must be atoned for by the public offering.

183 The paragraph is repeated in the Babli, 12b. From here on to the end of the Halakhah there is a parallel in Yoma 8:6 (\(^*\)).

183a Text of Yoma.

184 The Mishnah mentions “minor or serious transgressions”; this covers all biblical commandments. But “positive commandments and prohibitions, extirpations, and capital crimes” also describe all biblical commandments. Therefore the last clause of the Mishnah must be read as
explanation of the preceding one.

185 In Yoma: “Rebbi Jehudah”. The reading here is supported by the Babli.

186 This must refer either to infractions for which the penalty is not spelled out (Note 182) or to cases where guilt cannot be ascertained. The standard example is that of a person who ate one of two pieces of meat, one of which was kosher, the other one severely forbidden either as forbidden fat or as sacrificial meat which became impure (Rashi, Note 183). If it is not possible to ascertain which of the two he ate, then a suspended reparation sacrifice is due; but the obligation to bring a suspended reparation sacrifice is cancelled by the Day of Atonement, as determined in the next paragraph (and Halakhah 1:2, Note 69, Horaiot 1:1 Note 18).

187 This refers to the situation described in the previous Note. If he intended to eat one of the two, knowing that one was severely forbidden, he either committed no sin or he committed a serious crime for which no personal sacrifice can atone.

188 No biblical penalty is attached to the failure to fulfill a positive commandment. “Prohibitions” are those to which no biblical penalty is attached. The basis for the statement are the homiletics quoted at the end of this Halakhah.

189 The Yoma text adds: “for which no sacrifice is due.” This is understood, cf. Note 182.

190 Which carries away “all their iniquities”, Lev. 16:22). This last statement is missing in the Babli Shevuot; it is discussed in Keritut 25b. The scribe in Yoma originally wrote the same text as here, then crossed out “the same holds” and wrote “atones”.

It is understandable if it did not come to his knowledge. If it did come to his knowledge? Was it not stated. “From where that those obligated for purification sacrifices and certain reparation sacrifices for whom the Day of Atonement had passed, are obligated to bring them after the Day of Atonement, but those obligated for suspended reparation offerings are no longer liable?” Rebbi Abun bar Hiyya said, whether it was known to him on
it, or not known to him on it, did not the Day of Atonement already atone? Rebbi Simeon in the name of Levi [Sokhia], the Mishnah speaks of one who rebels against the day of Atonement. Why did he not say, if it was not known to him on the Day of Atonement? His words imply that even if it was not known to him on the Day of Atonement, the Day of Atonement atones.

Then no private sacrifice is due and the public sacrifice must atone for the damage done to the sanctuary.

Did we not imply that the public offering does not relieve the individual of his obligation to bring a sacrifice?

Horaiot 1:1, Note 20. The parallel in Yoma seems to quote instead from parts of Mishnah Keritut 6:4. Purification sacrifices must be brought even after the Day of Atonement but obligations of suspended reparation sacrifices are eliminated.

He asks whether the Day of Atonement eliminates the possibility of a suspended reparation sacrifice for the possibility of a sin committed prior to the Day. The positive answer was deduced from biblical verses in Horaiot 1:1.

This is the name (“from Sokho”) by which this Amora of the first generation is quoted in Yoma and other places by R. Simeon (ben Laqish). The name given here does not appear anywhere else. In the Yoma text, the sentence appears after the next; this seems to be more appropriate.

While it is inferred from the Mishnah that the answer to R. Abun bar Hiyya’s question is positive, it is pointed out that the answer still might be negative if the person in question rejects the notion of the Day of Atonement and does not want to be its beneficiary. The Babli, Keritut 7a (partially Sevuot 13a), has another example: a person who violates the Sanctuary late on the Day of Atonement and then dies. This example shows even according to Rebbi (later in the Halakhah) who holds that the Day of Atonement atones even without repentance, that the answer to R. Abun bar Hiyya might be negative.

The Tanna of the Mishnah.

A positive commandment, even if he did not repent. A prohibition? Rebbi Samuel in the name of Rebbi Ze’ira, only if he repented. If one said, “the elevation offering does not atone,” does the elevation offering not
atone? It atones even against his will. If one said, “the Day of Atonement does not atone,” does the Day of Atonement not atone? It atones even against his will. “I cannot accept that it atone for me,” it does not atone against his will. Rebbi Hanina ben Rebbi Hillel said, the opposite is reasonable. It is not up to a person to tell the King, “you do not reign.”

198 After the first two sentences, which are identical here and in Yoma except for the spelling of R. Ze’ira’s name, the text in Yoma is quite different (Note 202).
199 While the Mishnah in Rav Jehudah’s interpretation treats positive commandments and simple prohibitions in parallel, there is a difference between the two kinds of sins. The non-performance of a positive commandment is atoned for even without repentance while the atoning for breaching simple prohibitions requires repentance.
200 The biblical text does not indicate for which kind of sin an elevation offering does atone but Lev. 1:4 indicates that it atones.

The next paragraph will investigate for which sins it is atoning.

201 In the prior formulation, it was simply a false statement. But if somebody said, I am opting out, the atoning power of sacrifices shall not be valid for me, what he offers would be profane. If there is no offering, there cannot be atonement.
202 Since he brings the offering on his own initiative, if it is not brought for atoning it does not atone. But the Day of Atonement is given by God; it is not up to man to say what it can or cannot do. This is clearer from the Yoma text which therefore must be taken as original:

If one said, “the elevation offering does not atone,” “the elevation offering does not atone for me,” it atones. “I cannot stand that it atone for me,” it does not atone against his will. “The day of Atonement does not atone,” it atones. “I cannot stand that it atone for me,” it atones for him against his will. Rebbi Hanania ben Rebbi Hillel said, it is not up to that man to say to the King, “you are no King.”

Here the introductory statement of R. Hanina (Hanania) ben R. Hillel is missing correctly. The two texts are separate formulations. In the Babli, Keritut 7a, there is a related discussion.
The elevation offering atones for thoughts. What is the reason? What rises in your spirits will not be. Rebbi Levi said, the elevation offering atones for your spirits. And so in Job he says, maybe my children sinned and cursed God in their hearts. This implies that the elevation offering atones for thoughts.

In slightly different formulation in Yoma. In Lev. rabba 7(3) the paragraph is reproduced and the doctrine is attributed to R. Simeon ben Iohai.

Ez. 20:32. This is an untranslatable pun. The verbal noun dëlFr della “that which rises” (scil. “your thoughts”, f.) is identified with the homonym dëlFr della “the elevation offering”.

Job 1:5. The verse starts noting that Job offered elevation offerings since he said maybe . . . The Yoma text quotes only the first part of the verse, assuming that one remembers the remainder, in standard talmudic style.

Rebbi says, the Day of Atonement atones for all sins against the Torah except for him who tears away the yoke, or who breaks the Covenant, or who finds aspects in the Torah, where it atones if he repented but does not atone otherwise. Rebbi Yasa asked: Does Rebbi think that the Day of Atonement atones without repentance? There came Rebbi Ashian, Rebbi Jonah, Rebbi Abba, Rebbi Hiyya in the name of Rebbi Johanan: The Day of Atonement atones without repentance, and death cleanses without repentance. We have stated thus: The day of death equals repentance. Who stated this? Rebbi! Then what we stated, “death and the Day of Atonement atone with repentance,” does not follow Rebbi.
the covenant is he who tries to reconstruct a prepuce and does not circumcise his sons; one who finds aspects in the Torah is he who denies the divine origin of the Torah. It has no statement of Rebbi about the power of Death.

208 In Yoma: Rebbi agrees that the Day of Atonement does not atone without repentance, but death atones without repentance. The Babli supports the statement here about the Day of Atonement; it was formulated an anonymous Mishnah, i. e., authoritative doctrine, following the majority against his own opinion.

209 Mishnah Yoma 8:7.

210 Since the Mishnah requires repentance also on the Day of Atonement. Rebbi Matthew ben Harash asked Rebbi Eleazar ben Azariah in the Academy, did you hear the four types of Atonement which Rebbi Ismael explained? He answered him, there are three in addition to repentance. One verse says, return, naughty children, etc. But another verse says, for on that day, He shall pardon you, etc. And another verse says, I shall visit their crime with the rod, etc. And another verse says, the iniquity of this people shall not be atoned for until you die. How is this? If somebody violates a positive commandment and immediately repents, repentance suspends judgment, and the Day of Atonement pardons. About this one it says, for on
that day, He shall pardon you. If one intentionally transgressed [sins punishable by] extirpations or death penalties, repentance and the Day of Atonement atone half, and sufferings atone half. About this one it says, I shall visit their crime with the rod, and their iniquities with plagues. But by whom the Name of Heaven was desecrated, there is no power in repentance to suspend judgment, nor in the Day of Atonement to pardon, nor in sufferings to scour; but repentance and the Day of Atonement suspend, and death scours with sufferings. About this one it says, the iniquity of this people shall not be atoned for until you die. From this we learn that death scour.

Rebbi Johanan said, these are the words of Rebbi Eleazar ben Azariah, Rebbi Ismael, and Rebbi Aqiba. But the Sages say that the scapegoat pardons. How does it pardon? Rebbi Ze’ira said, by and by. Rebbi Hanania said, at the end. What is between them? If somebody died in-between. In the opinion of Rebbi Ze’ira, he already was pardoned. In the opinion of Rebbi Hanina, he was not pardoned. Rebbi Ze’ira said, a baraita supports Rebbi Hanina: There is strength in the ram which is not in the Day of Atonement, and in the Day of Atonement which is not in the Day of Atonement pardons without a ram, but the ram does not atone without the Day of Atonement. The ram pardons immediately but the Day of Atonement only at nightfall. Rebbi Huna said, the question was raised before Rebbi
Jeremiah and he said, explain it if they intended to bring another ram but they did not bring it. Rebbi Yose said, but does the Holy One, praise to Him, not see into the future? Then He should pardon immediately.

Rebbi Ze`ira said, but only if the person does not revert [to sin].

Yoma

As it is said, You forgot Your people’s sin. “He forgets” is written. [Io sin].

What is the reason? It does not say the triple thread “will never snap” but rather will not quickly snap. If you work on it, it will split.

Rebbi Huna said in the name of Rebbi Abbahu: There is no forgetting before the Holy One, but for Israel He becomes forgetful. What is the reason? As it is said, Who is a Power like You, forgives sin. “He forgets” is written. And so David said, You forgot Your people’s sin.

211 From here to the end of the Halakhah, the text is not only in Yoma but also in Sanhedrin 10:1, Notes 23-37, 14-22 (and in the Babli Yoma 86b). For part of the text there exists a Geniza fragment (G) edited by L. Ginzberg in his Yerushalmi Fragments (1909) p. 267. The main difference between the Leiden ms. text here and in Yoma and
the two other sources is that in the Leiden text the quotes of most verses are shortened so that the punch lines mostly are missing. Therefore the Sanhedrin and G texts should be considered original.

212 Jer. 3:22.
213 Lev. 16:20.
214 Ps. 89:33.
216 This name is used throughout in G and Yoma.
219 Is. 2:9.
220 Prov. 3:34.
221 Job 33:29.
222 Eccl. 4:12.
223 Micha 7:18.
224 Ps. 85:3.
225 This fraction of a sentence is the end of the preceding Mishnah. The scapegoat atones equally for Israel, Cohanim and the High Priest. The expression “Anointed Priest” is biblical (Lev. 6:15); as explained in Tractate Horaiot it excludes the High Priests of the Second Temple who were invested, not anointed.
226 There is a difference not only on the Day of Atonement, but all year round: the purification offering of the Anointed Priest (not the invested one) is a bull, but everybody else’s a lamb. For impurity of the Sanctuary and its sancta, everybody has to bring a sacrifice depending on his wealth except the Anointed Priest who is exempt (Mishnah Horaiot 2:7).

Mishnah 10: Together Israel, Cohanim, and the Anointed Priest. What is the difference between Israel and a Cohen or the Anointed Priest? Only that the blood of the bull atones for Cohanim in matters of the Sanctuary and its sancta. Rebbi Simeon says, just as the blood of the ram which is brought inside atones for Israel, so the blood of the bull atones for the Cohanim.

227 The actual atoning sacrifices on the Day of Atonement are separate for the High Priest (Lev. 16:6), the common priests (v. 13), and the people. But for the action of the scapegoat they are all equal.
228 Lev. 16:21.
229 He disagrees with the anonymous Mishnah and restricts the action of the scapegoat to the benefit of the people.
Halakhah 10: “Together Israel, Cohanim,” etc. But we did not state the Anointed.” Why did we not state “the Anointed”? If you say that we are discussing things which do not imply the obligation of a sacrifice, it is correct not to state “Anointed”. If you say about things which imply the obligation of a sacrifice, why do we not state “Anointed”?

230 The Anointed is mentioned in the anonymous statement, the first sentence of the Mishnah. Why is he not mentioned in R. Simeon’s statement?

231 For sins which do not require a purification sacrifice, the status of the High Priest is no different from that of a common priest. The mention of “priests” includes the High Priest.

232 Since the purification sacrifice of the Anointed Priest is different from that of everybody else (Note 226), it is necessary to mention him if one asserts that the scapegoat really serves everybody.

233 In a baraita.

234 In R. Simeon’s statement, the Anointed is not mentioned by design; therefore, the argument of Note 231 applies.

235 As explained by R. Eleazar ben Azariah, intentional sins will be forgiven only by prior repentance combined with the Day of Atonement.
How long must it live? Up to he will finish from atoning to Sanctuary\textsuperscript{239}, the words of Rebbi Jehudah. Rebbi Simeon says, up to the moment of confession\textsuperscript{240}. In Rebbi Jehudah’s opinion, the confession is indispensable\textsuperscript{241}. In Rebbi Simeon’s opinion, the confession is not indispensable\textsuperscript{242}. What is the difference between them?\textsuperscript{243} If he slaughtered without confession. In Rebbi Jehudah’s opinion, he must bring another bull. In Rebbi Simeon’s opinion, he does not have to bring another bull. The same holds for the scapegoat. If he sent it without a confession. In Rebbi Jehudah’s opinion, he must bring another goat. In Rebbi Simeon’s opinion, he does not have to bring another goat. If he confessed, slaughtered, then the blood was spilled. Do you say, does he have to bring another bull and confess a second time or did he do his duty with the first confession?\textsuperscript{244} The same holds for the scapegoat; must he cast lots a second time or did he do his duty with the first confession?\textsuperscript{245}

\textsuperscript{236} The Genizah fragment ends here.
\textsuperscript{237} This paragraph is \textit{Yoma} 6:2. However, there the sequence of topics is different. \textit{Sifra Ahare Pereq} 2(6-8).
\textsuperscript{238} \textit{Lev.} 16:10. Since the verse later only requires that the scapegoat be sent to a cliff (v. 22) in the desert (v. 21), but nothing is said what happens to the goat there, it is inferred that since it is emphasized that it must be alive as long as it is standing \textit{before the Eternal} that later it will not continue to live, but will be pushed over the cliff to its death (\textit{Sifra Ahare Pereq} 2(7,8), \textit{Yoma} 6:2, Babli \textit{Yoma} 40b,65a,71a.
\textsuperscript{239} \textit{Lev.} 16:20. If the scapegoat dies before the blood of the other ram was sprinkled on the gobelin and the incense altar in the Sanctuary, the ceremony has to be repeated. Later, no new ram has to be provided.
\textsuperscript{240} Until after the High Priest leaves the sanctuary to put his hands on the scapegoat to confess the people’s sins (v. 21). If the ram dies at the moment the High Priest starts to put his hands on its head, no new ram is needed.
\textsuperscript{241} Since neither the blood of the bull nor that of the ram may be brought inside the Sanctuary without prior confession (v. 11) the scapegoat may not be sent to the desert without confession; without a scapegoat the atoning is not complete.
Since for him the High Priest only has to stand next to the scapegoat, the final confession itself is needed only if the scapegoat is alive at that time.

Commentators note that the Babli Yoma 40b seems to switch the positions of RR. Jehudah and Simeon in this matter, but since Sifra parallels the Yerushalmi this seems to be unlikely. Maimonides does not mention the matter in his Code.

This is a non sequitur. But in the Yoma text, which has to be considered as original, the scapegoat is treated first, i.e., that a scapegoat sent away without confession for R. Jehudah requires an entire new ceremony with formal confession, but not for R. Simeon. Then it is asserted that by analogy if the bull whose blood is to be brought into the Sanctuary was slaughtered without confession, for R. Jehudah the slaughter is invalid and the entire ceremony has to be repeated, but not for R. Simeon.

If the bull was slaughtered correctly but for some reason its blood could not be brought into the Sanctuary, does R. Jehudah require a full repetition of the ceremony including confession?

If the scapegoat dies before it can be sent away, one needs a replacement. May one bring a single ram as replacement or does one have to bring two rams, cast new lots, use one as scapegoat and let the other graze until it develops a bodily defect when it can be sold and one buys other sacrifices with the money? With the Yoma text one has to read:

“Must he cast lots a second time or did he do his duty with the first casting of lots?”

(Babli Yoma 39b/40a.)
דיענות שלושא פרק שני

Mishnah 1: The kinds of awareness of impurity are two¹ which are four.

If one became impure, realized it, then the impurity was forgotten but he was aware of sancta; or sancta were forgotten by him but he remembered impurity; or he forgot both, ate sanctum and realized it after he had eaten: he is obligated for a variable sacrifice.

Mishnah 2: If one became impure, realized it, the impurity was forgotten but he was aware of the Sanctuary; or the Sanctuary was forgotten by him but he remembered impurity; or he forgot both, entered the Sanctuary and realized it after he had left: he is obligated for a variable sacrifice.

¹ Either centered on sancta or the state of oblivion require a sacrifice depending on the wealth of the perpetrator in a violations of the Sanctuary and sancta in a Sanctuary, as detailed in the Mishnah. All (Lev. 2:2-13).
Halakhah 1: “The kinds of awareness of impurity,” etc. Rebbi Jeremiah asked: It is obvious about the last awareness, until he knows that he is liable to bring a sacrifice for it. Is the same true for the first awareness? Let us hear from the following: Two paths, one impure and one pure. He walked on one of them, entered the Sanctuary, left, sprinkled repeatedly, immersed himself, walked on the second one, and entered the Sanctuary; he is liable and he knows that he is liable to bring a sacrifice for it. Rebbi Simeon ben Laqish said, this is Rebbi Ismael’s who said that he is liable for forgetting impurity and forgetting the Sanctuary. Rebbi Abun bar Hiyya said, we thought that one could say that Rebbi Simeon ben Laqish said this if he was certain that he was impure, he had forgotten the impurity and entered the Sanctuary. But not if it was in doubt whether he was impure or pure, he was oblivious of the Sanctuary and entered the Sanctuary. Since Rebbi Simeon ben Laqish said, this is Rebbi Ismael’s who said that he is liable for forgetting impurity and forgetting the Sanctuary: this implies even if it was in doubt whether he was impure or pure. Rebbi Johanan said, it is everybody’s opinion since a doubt of awareness is awareness. Since at a time when he does not know whether he was impure or pure you say it is certain knowledge, if he knows for certain that he is impure but does not know whether he is liable for a sacrifice then certainly this should be awareness.

2 Lev. 5:3 requires a sacrifice if after forgetting about impurity he knew and felt guilty. Since as a general rule no obligatory sacrifice can be offered voluntarily, the verse implies that a variable value sacrifice for violations involving impurity is possible if the offerer can prove that he is liable for the sacrifice.

3 There can be no forgetting if there was no prior knowledge. Must this prior knowledge be one of certainty or can it be one of possibility?

4 Babli 19a, Tosephta Tahorot 6:7 (the full text later, Note 41).

5 It was known that one of the paths passed over a spot where a corpse was buried. The spot is no longer recognizable and people do no longer remember which of the paths it was. Anybody walking on one of the paths is possible impure by forming a “tent” over a corpse.

6 He observed the ritual of removing the impurity of the dead (Num. 19) by being sprinkled with water containing ashes of the Red Heifer on the 3rd and 7th days and then immersing himself in a miqweh.
7 Since he walked both paths, he certainly polluted the Sanctuary by entering while impure. Even though he cannot determine which time he entered while impure, he can be sure that he did it exactly once; this is enough to trigger the obligation of a sacrifice.

8 Mishnah 2:6.

9 This implies that R. Simeon ben Laqish holds that for R. Aqiba, who admits a variable sacrifice only for cases where impurity was known, forgotten, and remembered, no sacrifice was possible in this case since the impurity was never known. It only is known that the two possibilities both were realized and there is no third alternative.

10 Since we accept the principle of the excluded middle (i.e., a statement is either true or false) a proof that the person could not have been pure both times is proof that he was impure (at least) once. For awareness of impurity no awareness of the exact time of impurity is needed. The Babli (19b) points out that this argument is needed only for variable reparation sacrifices since for purification sacrifices no prior knowledge is required.

11 It is irrelevant to him if he does not know when the obligation of a sacrifice started since the competent Temple authority can determine that his obligatory sacrifice is legitimate.

In Rebbi Simeon ben Laqish’s opinion, if one became impure but it was for him in doubt, would this be for him like forgetting, which makes him liable\(^{12}\)? Each of them keeps to his opinion, as they disagreed:

\(^{12}\) One ate five times the volume of an olive; he separately realized a doubt about each one. Afterwards it became known to him as a certainty. Rebbi Simeon ben Laqish said, the knowledge about his doubt determines his kind of sacrifices. Rebbi Johanan said, the knowledge about his doubt does not
determine his kind of sacrifices. Rebbi Yose bar Abun in the name of Rebbi Samuel bar Rav Isaac: Rebbi Simeon ben Laqish agrees that for the Anointed Priest the knowledge about his doubt does not determine his kind of purification sacrifice. What is the reason? Like purification offering, like reparation offering. The knowledge about his doubt determines the transgression for one who brings a suspended reparation offering. The knowledge about his doubt does not determine the transgression for one who does not bring a suspended reparation offering.

The argument of Rebbi Simeon ben Laqish seems to be inverted. There he says, the knowledge about his doubt determines his kind of transgression. But here he says, the knowledge about his doubt does not determine his kind of transgression. There, his reparation offering determines it. Here what do you have?

The argument of Rebbi Johanan seems to be inverted. There, he said, if part of the sin was atoned, all of the sin was atoned. And here he says so? Rebbi Johanan said this only for the last realization which does not require any sacrifice.

12 He became impure without noticing it. Then a thought arose in his mind that he might have become impure. He forgot about it, committed an offense against the laws of purity, and finally discovered that he actually had been impure to start with. Does this qualify for the sequence awareness - forgetting - awareness required for a variable sacrifice?

13 This is from Horaiot 3:2, Notes 40-45, and part of a longer disquisition (Notes 36-45). The quote here starts in the middle and, therefore, is not very intelligible. But in Horaiot the text is complete and completely intelligible.

14 Lev. 7:7.
Rebbi Johanan said: In any case of doubt in the public domain, the doubt has to be resolved as pure, but one does not allow to act\textsuperscript{15}. But did we not state\textsuperscript{16}: “Any case of doubt which was declared pure for heave is pure for sprinkling water, and in any case where it remains unresolved for heave the sprinkling water is poured out.” There is nothing unresolved for the sprinkling water; either it is genuinely pure or genuinely impure. Rebbi Ze`ira said, the Mishnah deals with a situation not caused by a sacrifice; what Rebbi Johanan said refers to a situation caused by a sacrifice\textsuperscript{17}. Everybody agrees that if the person transgresses and acted, it is pure\textsuperscript{18}.

The arguments of Rebbi Johanan are inverted. There\textsuperscript{19}, he says, if he transgresses and acted, it is impure. But here he said, if he transgresses and acted, it is pure. There in a private domain, here in the public domain\textsuperscript{20}. But you could even say, there and here in the public domain\textsuperscript{21}. The arguments of Rebbi Simeon ben Laqish are inverted, the arguments of Rebbi Johanan are inverted, since they disagreed: A nazir became impure by a grave in the abyss\textsuperscript{22}, Rebbi Simeon ben Laqish said, the nazir does not shave, but Rebbi Johanan said, the nazir has to shave. That is since Rebbi Johanan said, a doubt of awareness is awareness\textsuperscript{10}, even if the first was because of a crawling animal and the second by a corpse\textsuperscript{23}. \textsuperscript{24}The first before he converted and the second after he converted. The first before he grew two pubic hairs, the second after he grew them.

\textsuperscript{15} It is stated in Mishnah Tahorot 4:11 (and made explicit there in Chapters 5-6) that any doubt which arises in the public domain whether something there is impure can be disregarded. Rebbi Johanan’s new statement is that even though this is accepted practice, one does not teach this and if a person comes to ask about it, one does not say that the thing is pure.

\textsuperscript{16} Parah 11:2. While in general the rules of purity for the water in which ashes of the Red Cow are to be dissolved to purify from the impurity of the dead are very strict, if for heave something is declared pure, such as a doubt of impurity arising in the public domain, it also must be declared pure for the sprinkling water. But if judgment is suspended, i. e., if the heave may not be eaten by a Cohen for perhaps it is impure (when its consumption would be a deadly sin), but it cannot be burned for perhaps it is pure and then the destruction of sancta
would be sinful, the water is considered impure and must be poured out on the ground to avoid further pollution.

The expression נטש biblically refers to the Red Cow (Num. 19:2), not to the water which is called הָיְתָה "throwing water". (Num. 19:20-21).

17 Since the Mishnah in Parah instructs the carrier of purifying water to disregard any doubt arising in the public domain, the instruction of R. Johanan that one does not allow anybody to act on this rule cannot be maintained. The answer is that R. Johanan stated his rule only for sancta of the Sanctuary; for all sancta not connected with the Sanctuary it is a publicly stated rule that a doubt in the public domain has to be disregarded.

18 Only if somebody acted as if it was pure and after the fact comes to ask a rabbinic authority, one has to declare the matter as pure even in the Sanctuary. “Everybody” includes R. Aqiba who in certain cases declares such a doubt as causing impurity (Tahorot 5:1).

19 Later in this paragraph, when he declares that a nazir, who is forbidden to become impure by the impurity of the dead, must treat a certain case of doubt of impurity as a case of certain impurity.

20 And everybody agrees that in a private domain any doubt of impurity has to be treated as certainty of impurity.

21 Following R. Ze’ira.

22 A corpse, visibly the victim of an accident not seen by witnesses and found buried in straw or pebbles or other loose material. One may assume that the corpse was buried by the accident, rather than humans. Nazir 9:2 Notes 59ff.

23 While everybody agrees that the nazir is impure if it should become clear that he passed by after the accident and therefore violated the terms of his vow, in R. Simeon ben Laqish’s view the verse Num. 6:9 clearly requires that the nazir be aware of his impurity at the moment it happens to be required to shave and start the ceremony described there. This makes the rules of nazir parallel to the rules of the variable sacrifice which also presuppose prior knowledge (Horaiot 3:3). But for R. Johanan, any awareness of any impurity, even a minor one which can be remedied by simple immersion in water, is counted as full awareness of impurity.

24 These two sentences have no place here; they are copied from Horaiot 3:3, Notes 76,77.
Somebody became impure through a corpse and knew it; by a crawling animal\textsuperscript{25} and did not know it. The minor impurity is not mentioned with the severe impurity\textsuperscript{26}.

Somebody became impure through a corpse and did not know it; by a crawling animal and did not know it. Then it became known to him about the crawling animal, and after that it became known to him about the corpse. Since it first became known to him about the crawling animal, is there minor impurity together with the severe one, or since the impurity of the corpse preceded, should the impurity of the crawling animal and the knowledge about it be pushed aside so that the minor impurity not be mentioned with the severe impurity\textsuperscript{27}?

Somebody became impure through a corpse and knew it; by a crawling animal and did not know it, and entered the Sanctuary. When he was oblivious of the corpse he is liable\textsuperscript{28}; when he was oblivious of the crawling animal he is not liable\textsuperscript{29}. If he went to immerse himself for the severe impurity and the minor impurity was additional, it is counted also for the minor impurity\textsuperscript{30}. In which respect? If he immersed himself and then entered the Sanctuary he is not liable.

\textsuperscript{25} One of the eight animals, reptile or rodent, mentioned in Lev. 11:29,30, whose carcass makes a person impure by contact. The impurity is removed by immersion in a sufficient amount of water and the following sundown. Therefore this is considered a minor impurity in contrast with the impurity induced by a corpse (or leprosy and some bodily discharges) which need elaborate ceremonies of purification.

\textsuperscript{26} A violation of the purity of the Sanctuary or its sancta can be remedied by a (variable value) sacrifice only if there had been prior awareness of the impurity but oblivion at the moment of the violation (Note 1). If the person enters the Sanctuary oblivious of his impurity but having had prior knowledge of his severe impurity, his having no knowledge of the minor impurity does not invalidate his knowledge of severe impurity; he is liable for a variable value sacrifice.

\textsuperscript{27} One must assume that he entered the Sanctuary having had knowledge but momentarily being oblivious of his minor impurity but before becoming aware of his severe impurity. Before he brought his sacrifice he became aware of the prior severe impurity. If he had not become aware, clearly he would be liable for a variable sacrifice. For the violation of the purity of the Sanctuary by his severe impurity he cannot bring a sacrifice since he had no prior awareness. Does he still have
to bring the sacrifice for the minor impurity or does his inability to bring one for the severe impurity disable him from bringing the one for simple impurity? No answer is given.

28 All conditions for a variable value sacrifice are satisfied; the minor impurity which was unknown to him cannot interfere with the sacrifice for the severe violation.

29 Since he never had prior awareness of this impurity by the time he entered the Sanctuary, the basic conditions for a sacrifice are missing.

30 Since the purification from the impurity of the dead at the end also requires immersion (Num. 19:19), the latter automatically eliminates the minor impurity even if the minor impurity was not on his mind while he was immersing himself.

If he went to immerse himself for a minor impurity and a severe impurity was additional, it does not count for him for the severe impurity. In which respect? If he immersed himself and then entered the Sanctuary he is liable. Therefore not for a severe impurity and a severe impurity was additional. Therefore not for a minor impurity and a minor impurity was additional. If he went to immerse himself for severe impurity and tree limbs and wall extensions were additional are these like severe impurity since Rebbi Johanan said that for heave all of them are [impure] from the Torah, or are they like minor impurity since the nazir does not shave because of them?

31 While it is possible to cleanse oneself from multiple impurities with one immersion (Babli Keritut 8a, bottom), the immersion is effective only for those for which it is done. The only exception is a minor impurity if the immersion is for a severe one without thinking of the minor one.

32 For a variable value sacrifice because of the desecration of the Sanctuary by the severe impurity.
for outcropping of rocks or stone walls or bushes that grow in crevasses of stone walls. It is assumed here that the person underwent the full ceremony of cleansing from the impurity of the dead while not being aware that he also had passed under such a tree or outcropping. Mishnah Nazir 7:3.

35 Nazir 7:3, Note 158.

36 If a person walked under such a tree limb or wall extensions where a piece of a corpse of at least the size of an olive might be buried, he becomes possibly impure by the severe impurity of the dead but as long as this is only a possibility, not a certainty at the moment of his passing by, a nazir cannot shave his hair off because of this impurity.

An androgynus who saw whitish effluent and entered the Sanctuary is not liable. If he saw red effluent and entered the Sanctuary, he is not liable. If he saw simultaneously whitish and red and entered the Sanctuary, he is liable. There is a Tanna who states: he is not liable. Rebbi Johanan said, this is Rebbi Simeon, as it was stated: “Two paths, one pure and one impure. He walked on one of them, entered the Sanctuary on the first one, sprinkled repeatedly, immersed himself, on the second one and entered; he is liable. Rebbi Simeon declares him not liable in this case. Rebbi Simeon ben Jehudah in the name of Rebbi Simeon declares him not liable in all cases.”

One understands the androgynus, for whitish effluent you declare him to be a woman, for red effluent you declare him to be a man. But here there is no known impurity. Rebbi Samuel bar Sosartai said, explain it if he forgot the first. Rebbi Yose asked, where do we hold? If he forgot it forever, it is one path. If he forgot repeatedly, there are two paths. Rebbi Yose ben Rebbi Abun said, Rebbi Simeon parallels Rebbi Eliezer in the interpretation of
Hizqiah\textsuperscript{45}. Just as Rebbi Eliezer said there, until he knows whether he did become impure by a crawling animal or a corpse, so Rebbi Simeon says here, until he knows whether he did become impure by red [effluent] or by whitish. One understands there since he said, a doubt of awareness is awareness\textsuperscript{10}. But here, since he saw whitish and red together, it is certain knowledge\textsuperscript{46}.

37 He has both male and female genitals, a penis with testicles and a vagina. It is not known whether he is male or female.
38 Gonorrheal discharges from his penis. This causes severe impurity in a male. Similar discharges from a female’s urethra are pure.
39 Menstrual blood causes impurity to a woman; prolonged discharge causes severe impurity. No flow of blood causes impurity in a male.
40 Since he is impure both as a male and a female, he is impure and forbidden access to the Sanctuary.
41 He holds that the knowledge of a doubt is not the certain knowledge which triggers the liability for a sacrifice for impurity in the Sanctuary. Since between the two occasions he removed the possible impurity from the first path, it could be that the second time he was perfectly pure entering the Sanctuary.
42 This is the correct text of the Tosephta as seen from R. David Pardo’s commentary (Jerusalem 1977).

While R. Simeon following the first quote would agree with the anonymous Tanna if there was no purification in between the two entries, R. Simeon ben Jehudah holds that no logical argument (either, or, and no third possibility) satisfies the requirement of direct awareness.
43 Since another requirement for the sacrifice was the element of forgetting, he must have forgotten about the possible first impurity both times he entered the Sanctuary. There is no certain knowledge preceding any of the two occasions according to both versions of R. Simeon’s position.
44 Since nobody can bring a personal sacrifice for a sin unknown to him; as long as he realizes only one incident there is only a possibility, not certain knowledge, of a violation of the Sanctuary’s sanctity. But offenses to be atoned for by a variable sacrifice do not qualify for suspended reparation offerings; no sacrifice is possible.
45 In Mishnah 7, R. Eliezer and R. Aqiba both hold that not being unaware of the Sanctuary but being unaware of impurity triggers the obligation of a variable sacrifice. In Halakhah 2:6, Hizqiah holds that they disagree in that R. Eliezer requires prior awareness of the kind of impurity but R. Aqiba only of the fact of impurity.
46 There is nothing unclear here about the facts of impurity, only about the person’s body. Both impurities are body- produced; they fall in the same category.
Rav Hisda asked: What is the situation if he entered the Sanctuary thinking it was a synagogue? Rebbi Yose said, the following is what we are saying: One knew that there exists impurity in the world but he did not know whether one is liable for a sacrifice because of it, that certainly is awareness. But the following is where we hold, if it was clear to him that he was impure but he was oblivious of the Sanctuary, and he entered the Sanctuary. And so if it was clear to him that this was the Sanctuary, he was oblivious of the impurity and entered the Sanctuary.

Rebbi Yose asked: If one ate half the volume of an olive being aware of the Sanctuary but oblivious of impurity and about half the volume of an olive being aware of impurity but oblivious of the Sanctuary; do the oblivions combine?

47 He knows that he is impure and knows that as such he may not enter the sanctuary but he does not recognize the Sanctuary. The question can be asked only according to R. Ismael (Mishnah 6).

48 Since there was awareness of impurity, his ignorance of the law is irrelevant.

49 For R. Ismael he is liable for a sacrifice but not for RR. Eliezer and Aqiba.

50 He is liable for a sacrifice according to all opinions.

51 This question is not answered here. It is asked again in Šabbat 7:1 (9b l. 46) where it is not answered either. But there the question is compared to one where violations of the Sabbath combine if both are small so as not to trigger the obligation of a purification sacrifice, the one made in oblivion of the Sabbath Day but awareness of the categories of forbidden work, the other in awareness of the Sabbath but oblivion of the categories of forbidden work. The latter question is not answered in the Yerushalmi either but it is discussed at length in the Babli (Šabbat 70b-71b), the Galilean participant in the discussion being R. Ze’ira.
Mishnah 3: Whether one entered the courtyard or the addition to the courtyard⁵², because one adds to the city and the temple courtyards only by King and Prophet, and Urim and Tummim, and the Synhedrion of Seventy-One, and two thanksgiving offerings, and song, with the Court walking and the two thanksgiving offerings after them. The inner one is eaten but the outer one is burned. Any [addition] which was not made with all these, one who was entering there is not liable for it⁵³.

52 The biblical definition of “Sanctuary” as applied to the Temple Mount in Jerusalem applies only to the area sanctified by Solomon and his successors during the existence of the First Temple, and its reconstruction by Nehemiah. It excludes the additions to the Temple area and the Temple Mound made by Herod. Similarly, the city of Jerusalem which represents the Camp of the Israelites in the desert is only the First Temple city, with the area between the First Temple wall and the Damascus gate being of questionable sanctity.

53 There can be no liability to bring a variable sacrifice for entering the Herodian additions to the Temple Mount in a state of impurity.

Halakhah 3: “Whether one entered the courtyard,” etc. ⁵⁴ Rav said, at the start: ⁵⁵ David ascended following Gad’s word, that is King and Prophet. ⁵⁶ Solomon started to build the Temple of the Eternal in Jerusalem, these are Urim and Tummim. ⁵⁶ And his father David, this is the Synhedrion, ⁵⁷ ask your father and he will tell you. Song, after them went Hoshiaia and the officers⁵⁸. Thanksgiving sacrifices, I put up two thanksgiving sacrifices⁵⁹. Rebbi Samuel bar Rebbi Yudan said, what is written, walking? No, being in procession.
Because it was the vulnerable spot of Jerusalem; it could be conquered from there.”

54 This Halakhah is a very truncated and inferior copy of parts of Sanhedrin 1:5 (Notes 288-294). The second paragraph is from the end of that Halakhah, Note 326. Its inclusion indicates that all of that Halakhah should be studied here.

55 2S. 24:19.
56 2Chr. 3:1.
57 Deut. 32:7.
58 Neh. 12:32.

Mishnah 4: If one became impure in the Temple courtyard, then was oblivious about impurity but remembered the Sanctuary, [or] was oblivious about the Sanctuary but remembered impurity, [or] was oblivious of both. If he prostrated himself, or tarried that he could have prostrated himself, or left on a lengthy path, he is liable. But on the shortest path he is not liable; this is the positive commandment in the Sanctuary about which they are not liable.

60 If somebody entered the Sanctuary area legitimately because he was pure and then became impure in the sacred precinct (e. g., a dead lizard was lying there and he accidentally touched it), no sin attaches to him if he leaves immediately on the shortest possible path. If he tarries or leaves on a longer path, he commits a sin for which he will be liable if the original awareness was followed by any forgetting.

61 “They” are the members of the Supreme Court who do not have to offer a sacrifice for a wrong ruling in this matter (Mishnah Horaiot 2:4).
Halakhah 4: “If one became impure in the Temple courtyard,” etc.
Rebbi Hizqiah, Rebbi Immi in the name of Rebbi Eleazar: One verse says, he defiled the dwelling place of the Eternal, another verse says, he defiled the Sanctuary of the Eternal. Why is this? To state a difference between one who became inside and one who became outside. If he became impure (inside) not unless he bring his head and most of his body inside; if he became impure (outside) not unless he stay for prostrating. If he became impure inside and entered further inside? Let us hear from the following: “If he prostrated himself, or tarried that he could have prostrated himself.” If he tarried, is that not as if he brought his head and most of his body inside, but you are saying, “he tarried that he could have prostrated himself.” And here, not unless he tarried that he could have prostrated himself. How is that? About which of them does he become liable? About the first or the last? The colleagues say, about the first. Rebbi Yose told them, one says to him, leave, and you say about the first? But we must hold about the last.

There, we have stated: “They removed the cup and the censer for him.” About which of them does he become liable? About the first or the last? The colleagues say, about the last. Rebbi Yose told them, one says to him, enter, and you say about the last? But we must hold about the first.

63 Num. 19:20
64 The two verses appear in the same Chapter. There must be a reason for the use of two synonyms. It is a hint that the rules are different for one who enters while impure and one who becomes impure inside. (There is another opinion, Sifry Num. 126, that describes the movable Tabernacle and the permanent Temple. The Babli 16b brings both opinions in the name of R. Eleazar.)
65 It is clear that the places of “inside” and “outside” have to be switched. A person already impure becomes guilty and eventually liable for a sacrifice at the moment his head and most of his body are inside the sacred precinct; one becoming
impure inside if he tarries long enough to prostrate himself.

66 Do we say that if he became impure inside and moved his head and body further inside instead of towards the outside that he is guilty on two counts?

67 The Mishnah makes it clear that only the time elapsed inside the sacred precinct determines his liability, not the direction of his motion.

68 The moment he became impure or the moment he stayed longer than necessary.

69 This essentially is a repetition of the previous argument: Not the fact that he became impure determines his guilt but the time he tarried inside. The argument is recast as introduction to the next paragraph.

70 Mishnah Yoma. 5:1. The reference really is to the end of that Mishnah: “The High Priest takes the censer in his right hand and the cup in the left hand.” In general there is a rule that all priestly service in the Temple has to be performed with the right hand only. The left hand has to be used here to make it possible for the High Priest to enter the Holiest of Holies only once. On that it is noted (Yoma 5:2, 42b l. 52) that if he went twice, using only his right hand, the service is valid. Nevertheless, it is sinful to enter the Temple building more often than necessary. About this the paragraph here is then copied in Yoma.

71 Since the first entry is necessary in any case, the High Priest cannot be faulted for the first entry even if he only carries the censer.

The measure of prostrating is ten cubits. How is this? If the lengthy path was twenty but the short one ten. He went five. If he went in this direction, five, if in the other, fifteen. Rebbi Yose said, he never becomes liable unless the lengthy path exceed the short one by (ten). How is that? If the lengthy path was thirty but the short one ten. He went five. If he went in this direction, five, if in the other, twenty-five.

What is the duration of prostrating? Rebbi Simon in the name of Rebbi Joshua ben Levi: up to a greeting from one person to another. Abba bar Huna in the name of Rebbi Johanan: up to a greeting from a student to his teacher, “peace be with you, my teacher.”
73 If the time frame described in the Mishnah by “prostrating” is measured by the difference in length between a lengthy and a short path, since it cannot be made dependent on the speed of one’s body motions.

74 The only thing that counts is the difference in the lengths of the paths, not the total lengths.

75 From the following it is clear that one has to read “twenty”.

76 If one measures not by length but by time, still admitting differences between one person and the next.

77 The time frame needed to speak the two words לֶא לָיְמִי.

78 This is misspelling for Abba bar bar Hana; cf. his statement in Berakhot 2:1, Note 51, Nazir 4:1 Note 12.

79 The time frame allowing three words to be spoken, which in general is the definition of “immediately”. In the Babli 16b the time given is either the time needed to recite the entire verse 2Chr. 7:3 or at least half of it.

**Mishnah 5:** What is the positive commandment about the menstruating woman? If he was having sex with a pure one and she said to him, I became impure, if he separates immediately he is liable, for his separation is as pleasurable to him as his entry.

79 For which the High Court has to bring a purification sacrifice if they rule wrongly, Horaiot Mishnah 2:4.

80 For extirpation if he acts intentionally, for a sacrifice if unintentionally.

81 He has to stay immobile until his erection subsides; Horaiot 2:5 Note 69.

**Halakhah 5:** “What is the positive commandment about the menstruating woman,” etc. Cahana said, is it impossible that there was knowledge at the beginning and knowledge at the end and oblivion in between? Rebbi Samuel ben Eudaimon objected before Rebbi Mana: Could that be for the teachers?
He told him, we have a problem with those entering and you bring us teachers? What about it? Rebbi Samuel bar Rav Isaac said, commandments, commandments. Since commandments mentioned there are about fixed-value offerings, here also about fixed-value offerings.

82 This paragraph does not belong here; it is copied from Horaiot 2:5 (Notes 60-63) and refers to the statement of the Mishnah there that the High Court never incurs the liability for a purification sacrifice for a wrong decision about the purity of the Sanctuary. It is explained that a purification sacrifice is due only for wrong rulings in matters that require fixed value purification sacrifices, not matters of the Sanctuary which trigger obligations of variable value sacrifices.

Mishnah 6: Rebbi Eliezer says, the crawling animal and he became oblivious, he is liable for forgetting the crawling animal but is not liable for forgetting the Sanctuary. Rebbi Aqiba says, and he became oblivious while he was impure, he is liable for forgetting impurity but is not liable for forgetting the Sanctuary. Rebbi Ismael says, and he became oblivious, and he became oblivious, two times to make him liable for forgetting impurity and forgetting the Sanctuary.

83 Lev. 5:2.
84 The biblical text never hints at the possibility that anybody could be unaware of being in the holy precinct; therefore no penalties are spelled out for this case.
85 Lev. 5:3, speaking of impurities generated by the human body.
86 This is the opinion formulated in Mishnah 1. The Mishnah is quoted Sifra Hova (Wayyiqra 2) Pereq 12(7).
Halakhah 6: “Rebbi Eliezer says,” etc. Hizqiah says, there is disagreement between them. Rebbi Johanan said, interpreting the verse is between them; there are Tannaim who state, he is liable for forgetting impurity but is not liable for forgetting the Sanctuary, and there are Tannain who state, he is liable for forgetting the crawling animal but is not liable for forgetting the Sanctuary.

The argument of Rebbi Eliezer seems inverted. There he says, even if he did not know. But here he says, not unless he knew. There, by which he sinned, not unless he knew by what he became liable. Here, while he was impure, in any case.

The argument of Rebbi Joshua seems inverted. There he says, while he was impure, not unless he knew by what he became liable. Here, by which he sinned, in any case.

How does Rebbi Eliezer uphold by what? This excludes the one who is occupied.

87 As explained in Halakhah 1, Note 45. R. Eliezer requires awareness of the cause of his impurity, R. Aqiba only requires awareness of impurity. This is the only opinion mentioned in the Babli, 18a.

88 R. Eliezer and Aqiba only differ in the way they deduce the law from the verse, not in the substance of the meaning. The formulation is just a matter of style.

89 This refers to Mishnah Keritut 4:2 where R. Eliezer and R. Joshua disagree in the case that a person knows that he has inadvertently committed a sin which if intentional is either one subject to Divine extirpation or a capital crime, but he does not know which law he broke. Examples are a person who inadvertently ate a piece of meat which either was forbidden fat or disqualified sacrificial meat, or a man who slept with a woman but he does not know whether it was his wife during her menses or his sister. R. Eliezer declares him liable for a fixed value purification sacrifice since in any case he committed a deadly sin; R. Joshua declares him not liable (and therefore prevented from sacrificing) as long as he cannot specify which prohibition he broke. It is implied that in the case of a variable value reparation sacrifice for violation of the purity of the Sanctuary the opinions are switched; R. Eliezer requires knowledge of the kind of impurity (e. g., “a crawling
animal") whereas R. Joshua only requires awareness of impurity. Hizqiah would trace R. Aqiba’s opinion to his teacher R. Joshua.

90 The arguments quoted for R. Eliezer belong to R. Joshua and vice-versa.

91 *Lev.* 4:23, the purification sacrifice of the Prince. The verse insist, he became aware of his transgression by which he sinned, he can state the paragraph which he broke. But *Lev.* 5:2 only requires awareness of impurity.

92 This is R. Eliezer’s argument. As formulated in the Mishnah, he reads *Lev.* 5:2 as requiring awareness of the nature of his impurity (or, taking vv. 2,3 together, at least certain knowledge of the kind of impurity, whether simple or severe.) But in v. 4:23 and certainly v. 27, the purification sacrifice of a commoner, where it is only required that he sinned inadvertently, can be read as authorization for a sacrifice if only the fact was known that a sin was committed.

93 Accepting that R. Eliezer refers to 4:27, the peculiar language of 4:23 still has to be explained. He excludes a person who was intent on doing something permitted when it happened that he broke a prohibition, e. g., that he was intent of sleeping with his wife when she was permitted to him and in the dark of night his sister substituted for her. She sinned but he did not.
Mishnah 1: There are two kinds of oaths1 which are four kinds: An oath that I shall eat, or that I shall not eat; that I ate, or that I did not eat. An oath that I shall not eat, when he ate the most minute amount, he is liable, the words of Rebbi Aqiba. They said to Rebbi Aqiba, where do we find that one who eats the most minute amount should be liable, that this one be liable?

He told them, where do we find that a person talks and has to bring a sacrifice; but this one talks and has to bring a sacrifice!

An oath that I shall not eat, when he ate and drank he is liable only for one. An oath that I shall not eat or drink, when he ate and drank he is liable for two.

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1 Mishnah 1:1. This Chapter treats “blurted oaths” (Lev. 5:4) where a person makes an oath that he shall do or not do certain things, which do not involve others. A breach of such an oath triggers a liability for a variable sacrifice (or if made before witnesses, punishment by flogging.) The liability for a variable sacrifice is subject to the usual conditions for such a sacrifice, prior knowledge, oblivion, and remembrance.

2 In all other matters, only food in the volume of an average olive triggers obligations.

3 In general, only actions, not words, trigger obligations; but an oath is simply words (Note 166). In commercial transactions an obligation is enforceable only when it was confirmed by an action, such as a signature or a handshake. But there are other possible exceptions, such as blasphemy and apostasy (Note 21).

4 Since the general acceptation of “eating” is “ingesting nourishment”, this is the meaning of the word if used in an oath unless the wording of the oath clearly indicates that a more narrow meaning is intended, such as “ingesting solid food”.

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שבתות שтивו פרק שליש
Halakhah 1: “There are two kinds of oaths which are four kinds,” etc. One understands “that I shall eat, or that I shall not eat.” “That I ate, or that I did not eat”⁵? Where do we stand? If it is known that he ate and he swore that he did not eat, it is a false oath⁶. But if he was of the opinion that he ate and swore that he did not eat? Rebbi Abba, Rav Jehudah in the name of Rav: If he is inadvertent for its sacrifice or intentional for its sacrifice⁷. But “I was of the opinion that this is not an oath” is permitted⁸. But it must be that he was intentional in the deed but in error about the sacrifice⁷. Did not Rebbi Abbaḥu say in the name of Rebbi Johanan⁹: Intentional about fat and in error about the sacrifice, one warns him, he is flogged and has to bring a sacrifice¹⁰. This is impossible, as Rebbi La said in the name of Rebbi Eleazar: So did Rebbi Ismael¹¹ answer Rebbi Aqiba: Do we find a situation where one is liable if intentional because of a false oath and in oblivion because of blurring¹²? Should not Rebbi Aqiba retort, we find a situation where one is liable if intentional because of a false oath and he brings a sacrifice¹³? But we deal here with the case that he was sure that he ate, and he swore, and it turned out that he had not eaten. Not about him who said that this is not an oath? There¹⁴, if he says this is not an oath; but here if he knows that this is an oath but he errs because of something else¹⁵.

5 We do not talk here about judicial oaths which by necessity are about past events, but “blurted oaths”. How can a statement about past events ever lead to a variable sacrifice? For a future directed oath it is possible that he had the honest intention of keeping what he swore to but later he forgot. But for the past we must
assume that he knows what he did.

6 Under the right conditions he can be punished for it, but there can be no atoning sacrifice.

7 A sacrifice is possible only for an inadvertent sin. In this context, “inadvertent” may mean that the perpetrator was not aware that his act was criminal or sinful, or that he was not aware that the act if inadvertent requires a sacrifice.

8 A statement qualifies as an oath only if it is pronounced as such, not as a simple statement.

9 Terumot 7:1 Notes 5,6; Sabbath 11:5 (13b), Ketubot 3:1 Note 30, Bava Qamma 7:2 Note 29; Babli Sabbath 69a.

10 Sacrifices are possible only for inadvertent deadly sins. If a person knew that eating fat was forbidden but did not know that it was a deadly sin, he simultaneously committed an intentional sin and an unintentional deadly sin. If he had been duly warned by two witnesses not to and an unintentional deadly sin. If he had been duly warned by two witnesses not to break the law, he can be flogged for the intentional sin which qualifies for a sacrifice for the unintentional deadly sin even though he was not aware that his act was criminal or that he was not aware that the act if inadvertent requires a sacrifice.

11 Who is R. Aqiba’s opponent. All of Mishnah 1 is R. Aqiba’s teaching. R. Ismael opposes adding backward looking oaths as blurted oaths.

12 A future directed oath, where it cannot be verified instantly whether it will be kept or violated, is an actionless crime and cannot be prosecuted (cf. Note 3). The preconditions of a sacrifice for a blurted oath negate the possibility of judicial penalties.

13 If R. Aqiba did accept R. Johanan’s argument, it would be possible for a person to be flogged for violating the prohibition of perjury (Lev. 19:12) and still be liable for a sacrifice. This would make R. Ismael’s objection irrelevant.

14 If he denies that he intended or pronounced an oath, there is no oath and the entire discussion is irrelevant.

15 He made the oath in good faith but his mind was distracted by other things. It is an inadvertent sin which qualifies for a sacrifice.
Where do we hold? If about one who said, an oath that I shall eat according to Torah standards, even Rebbi Aqiba will agree. And if about one who says, an oath that I shall not taste, even the rabbis will agree. But we hold, about minute amounts. Are minute amounts eating? Explain it following Rebbi Aqiba who said that a minute amount is eating. What is the difference between them? “An oath that I shall eat this loaf,” and he ate it except a minute amount. In the opinion of Rebbi Aqiba he is liable, in the opinion of the rabbis he is not liable. “That I shall not eat this loaf,” and he ate it except a minute amount. In the opinion of Rebbi Aqiba he is not liable, in the opinion of the rabbis he is liable. Also for blurted oaths it is so: “An oath that my wife may not have any usufruct from me if I shall eat this loaf,” and he ate it except a minute amount. In the opinion of Rebbi Aqiba his wife is forbidden [to have usufruct], in the opinion of the rabbis his wife is permitted. “That I shall not eat this loaf,” and he ate it except a minute amount. In the opinion of Rebbi Aqiba his wife is permitted [to have usufruct], in the opinion of the rabbis his wife is forbidden. Also with property it is the same. “An oath that my properties be forbidden to me if I shall eat this loaf,” and he ate it except a minute amount. In the opinion of Rebbi Aqiba they are forbidden, in the opinion of the rabbis his properties are permitted. “That I shall not eat this loaf,” and he ate it except a minute amount. In the opinion of Rebbi Aqiba his properties are permitted, in the opinion of the rabbis they are forbidden.

16 The standard minimal amounts of food which in biblical rules either are needed for the validity of an act or may lead to prosecution of a criminal act. This is the volume of an average olive. R. Aqiba must agree that if somebody insists that his food intake be measured by biblical standards, the minimum is an olive-sized piece. The Babli disagrees (21b) and holds that R. Aqiba agrees with R. Simeon that there is no lower limit for prosecutable offenses (Pessaḥim 3:1 29d l. 61).

17 Tasting by definition involves minute amounts (Babli 22a).

18 Between R. Aqiba and his opponents in the second part of the Mishnah.

19 Let \( e \) denote the volume of an olive. If somebody swore that he would (or would not) eat a certain amount \( m \), for R. Aqiba he fulfilled (or violated) his oath if he ate exactly amount \( m \). But for the rabbis he fulfilled (or violated) his oath if he ate more than \( m-e \) but less than \( m+e \). This is the basis of the subsequent examples. If he had
sworn to eat exactly one loaf, for R. Aqiba he violated his oath by eating a minute quantity less than a whole loaf but for the rabbis he swore truly.

20 This expression is difficult to understand and may be a copyist’s error since the preceding two examples are prime examples of blurted oaths. Maybe one should read “vows”, since the example uses the language of vows denying usufruct.

Does not the blasphemer have to bring a sacrifice? The colleagues in the name of Rebbi Simeon ben Laqish: They answered him according to his argument. Following your argument, since you say that the blasphemer does not act, where do we find that somebody talks and brings a sacrifice that this one talks and brings a sacrifice? Rebbi Abba from Carthage asked, is not Rebbi Simeon ben Laqish’s argument inverted? There he said, for Rebbi Aqiba the blasphemer does not act. But here he says, the blasphemer is acting in the opinion of Rebbi Aqiba. Rebbi La in the name of Rebbi Simeon ben Laqish: Two Tanna’im following the opinion of Rebbi Aqiba. One said, the blasphemer does not act, and the other said, the blasphemer does act.

21 This is a matter of contention. In Mishnah Keritut 1:1, the anonymous Tanna, supposed to represent the school of R. Aqiba, lists the blasphemer as one who has to bring a purification sacrifice for inadvertent sin but the Sages insist that the blasphemer cannot bring a sacrifice since a sacrifice is restricted to atone for actions.

22 The anonymous Tanna in our Mishnah here, who also is supposed to represent the school of R. Aqiba.

23 In Sanhedrin 7:13 (Note 282) R. Simeon ben Laqish explains that for R. Aqiba the conjurer of magical spells does not act since he simply speaks, but here he attributes the same opinion to the opponents of R. Aqiba.

24 The inconsistency is not R. Simeon ben Laqish’s but is the Mishnah’s choice of representatives of the reputed teachings of R. Aqiba. Since R. Aqiba’s students were scattered by the Hadrianic persecutions and only a few survived, the divergence of traditions is easily explained.
Mishnah 2: An oath that I shall not eat; when he ate wheat bread, and barley bread, and spelt bread, he is liable only once

While he broke his oath many times, is only one oath to break.

Halakhah 2: “An oath that I shall not eat; when he ate,” etc.  

Drinking is subsumed under eating but eating is not subsumed under drinking. Rebbi Jonah understood all this from: Therefore, I told the Children of Israel, none of you shall eat blood. Where do we hold? If about congealed blood, was it not stated that congealed blood is neither food nor drink? 

(But we hold, about minute amounts. Explain it following...
Rebbi Aqiba who said that a minute amount is eating.) And was it not stated: If one liquefied the blood and swallowed it, or froze fat and ate it, if there is the volume of an olive he is liable. What does Rebbi Jonah do with this? It is not food to become impure in the impurity of food, or fluid to become impure in the impurity of fluids. Rebbi Jonah changed and explained the Mishnah: You shall spend the money for anything you desire. Where do we hold? If about one who gives the taste of wine into a cooked dish, is that not spoiling the taste? But we hold with everything and the Merciful called it “eating.” The rabbis of Caesarea said, explain if about gomraya and orzaraya, since anything that is auxiliary to food is like food.

Rebbi Yose understood all this from the following: “An oath that I shall not eat; when he ate and drank he is liable only for one.” The colleagues said before Rebbi Yose, but it is said following this, “an oath that I shall not eat nor drink, when he ate and drank” should he be liable only for one? Rebbi Yose told them, if somebody said, an oath that I shall not eat this loaf, and he continued, an oath that I shall not eat this other loaf, when he ate both of them would he not be guilty on two counts?

Rebbi Hanina in the name of Rebbi Phineas understood all this from the following: “An oath that I shall not eat; when he ate inedible food and drank undrinkable fluids, he is not liable.” Therefore if he ate edible food and drank drinkable fluid he is liable.

Rebbi Abba understood all this from the following: “If he ate and drank in one forgetting he is liable only once.”

Rebbi Hinena understood all this from the following: I did not eat from it in my mourning, but I drank?

So far if he said, that I shall not eat, but he drank. If he said, that I shall not drink, but he ate? Drinking is subsumed under eating but eating is not subsumed under drinking.

The entire Halakhah does not refer to Mishnah 2 but to the last part of Mishnah 1 where it is stated that an oath to refrain from eating includes a prohibition of drinking but separate oaths for solid and fluid food mean just that. The text is a slightly inaccurate copy of a text in Ma’aser Shen 2:1, Notes 8-23 and Yoma 8:3 (45a); a parallel discussion is in the Babli, 22b-23a. The essence of the argument is that if one
mentions eating, the accompanying drink is included, but speaking of drinking no solid food is intended.

27 Lev. 17:12.

28 This text does not belong here; it was copied again from Halakhah 1, text between Notes 17,18.

29 Deut. 14:26. The argument is about the part of the verse which is not quoted, that the money of Second Tithe may be spent for all kinds of edibles, cattle and sheep, wine and liquor.

30 Ma`aser Šeni 2:1, Note 16. For the second word the preferred reading seems to be that of the other two sources, אוריים, which may denote cedar resin (J. Levy) or a derivative of אֵרֶץ “rice”. The readings for the first word, דַּמִּים, דַּמִּים, דַּמִּים show that the scribe did not know what to do with it; it may be a derivative of “gum” (gummi, סֵּן) (E. G.) used in the preparation of liquors.

31 Mishnah 1.

32 In the parallel sources correctly: Hananiah.

33 Mishnah 5.

34 In the parallel sources correctly: Abba Mari.

35 Mishnah Yoma 8:1.

36 Deut. 26:14

Mishnah 3: An oath that I shall eat neither wheat bread, nor barley bread, nor spelt bread; when he ate wheat bred, and barley bread, and spelt bread, he is liable for each single one.

37 He made three oaths, each one requiring a separate sacrifice.

38 An oath that I shall not eat bread” and he wrapped it in reed leaves or grape leaves and ate, he is liable only once.

39 “An oath that I shall not eat bread nor grape skin nor grape seeds, and he wrapped it in grape skins and grape seeds, he is liable for each one, and if he was a nazir he is liable for three.
Rebbi Johanan said, in comprehensive form. But in detail, no oaths fall on prohibitions. Rebbi Simeon ben Laqish said, even in comprehensive form no oaths fall on prohibitions.  

38 There is a long dissertation about this Halakhah in the commentary Mishneh Lammelekh to Maimonides, Hilkhot Ma’akhalot Asurot 14:12.

39 The expression “only once” is only because of the following sentence. For the bread wrapped in inedible leaves one has to state that he broke his oath even if the bread itself did not touch his mouth. (Grape leaves are edible when cooked; they may be marginally edible when raw.)

40 As explained in the Mishnah.

41 The formulation is not quite correct. For the oath he is liable for three sacrifices (or, if duly warned, for three floggings) but for breaking the nazir’s prohibition of anything coming from grapes (Num. 6:4) he is liable for flogging if duly warned, not for a sacrifice. His liability would be three sacrifices and one additional sin.

42 Babli 22b, 23b. In Nazir 1:2 (Note 55) R. Ze’ira proclaims as undisputed what here and in the Babli is R. Johanan’s opinion. Since all future Jewish souls were present at Mount Sinai, he already has sworn to keep the precepts of the Torah. Therefore an oath to break Torah prohibitions is void. R. Johanan holds that if an oath is valid since it contains matters not involving Torah prohibitions it is valid in general since an oath is either valid or invalid. R. Simeon ben Laqish (and in the Mishnah, R. Simeon ben Iohai) hold that oaths can be partially invalid; the parts infringing on Torah precepts are always void (Babli 33b).

Mishnah 4: An oath that I shall not drink; if he drank many kinds he is liable only for one. An oath that I shall drink neither wine, nor oil, not date syrup, if he drank he is liable for each single one.

Mishnah 5: An oath that I shall not eat; when he ate inedible food and drank undrinkable fluids, he is not liable. An oath that I shall not eat; when
he ate carcass or torn meat, abominations or crawling animals, he is liable; Rebbi Simeon declares him not liable. If he said, a qonam that my wife may not benefit from me if I had eaten today, if he had eaten carcass or torn meat, abominations or crawling animals, his wife is forbidden benefits.

43 In popular usage, swallowing inedibles is not called “eating”. Judicial interpretation of oaths must follow popular usage.

44 Eating forbidden food still is called eating. R. Simeon will agree with this statement; he holds not only that an oath to break biblical commandments is void in itself but breaking the law to fulfill an oath invalidates the oath.

45 Qonam is a substitute for qorban “sacrifice” which in the context of an oath or a vow means “it shall be forbidden to me as if it were sacrificial meat”, cf. Introduction to Tractate Nedarim.

46 He can neither have marital relations with her nor let her eat anything that is wholly or partially his, nor let her live in his house: he must divorce her and pay the marriage settlement in full. R. Simeon will agree.

Halakhah 4: “An oath that I shall not drink,” etc. In this case, Rebbi Simeon declares not liable. Rebbi Simeon follows his own opinion, as we have stated there: “How much does he have to eat from tevel to be liable? Rebbi Simeon says, anything; but the Sages say, the volume of an olive. Rebbi Simeon told them, do you not agree that one who eats an ant is liable? They told him, because it is a creature. He answered them, also a grain of wheat is a creature.” In Rebbi Johanan’s opinion, why does Rebbi Simeon declare not liable? Rebbi Ze’ira said, Rebbi Simeon follows his own opinion. It was stated in the name of Rebbi Simeon: You shall deprive yourselves, of what is permitted to you, not of what is forbidden to you.
Rebbi Abba bar Mamal asked: According to Rebbi Johanan, who said that comprehensive oaths fall on prohibitions, should we not state “an oath that I shall not eat; when he ate”53? Rebbi Ze’ira said, in the whole lifetime of Rebbi Abba bar Mamal we did not find an answer; after he had died, we found an answer. Where do we stand? If one said, an oath that I shall not eat meat, including Passover54; that I shall not eat during these ten days55, including the Day of Atonement, then the oath falls on prohibitions. Rebbi Yose said, one may infer from here if in front of him were olive-sized pieces of slaughtered [meat] and one of carcass meat and he said, [an oath] that I shall eat these ten olive-sized pieces, since he is not liable56 for the carcass meat, he neither is liable for the remainder.

Rebbi Abun bar Hyya asked: Why did he not say, “an oath that I shall eat of the slaughter of X”? Is there not fat? If he slaughters deer. Is there not the hip sinew? About fowl. Is there not blood57? Rebbi Hinena asked: Why did he not say, “an oath if I would eat of X” without detail58? Because of Rebbi Simeon. But if following Rebbi Simeon, how could we state the Day of Atonement, since Rebbi Simeon stated, you shall deprive yourselves, of what is (forbidden)59 to you, not of what is (permitted)59 to you. Only one has a fixed rate sacrifice, the other a variable one60.

They objected, is there not impurity of the Sanctuary and its sancta which need a variable rate [sacrifice] and did the Tanna not state it61? We come to state only things carrying a liability to extirpation; there is no extirpation for oaths.
They objected, there is no extirpation for larceny and it was stated\(^\text{62}\). We come to state only things which cannot become permitted after being forbidden. Oaths may become permitted after being forbidden\(^\text{63}\). This implies that there are no categories of work for the day of Atonement\(^\text{64}\), for if anybody violated all of them in one forgetting he is liable only for one [sacrifice] for all of them. But if anybody violated each of them separately, would he not be liable for each single one?

In the opinion of Rebbi Johanan, if one said, “an oath that I shall not eat unleavened bread”, he is forbidden to eat unleavened bread in the night of Passover. “That I shall not eat unleavened bread in the night of Passover,” he is flogged and eats unleavened bread\(^\text{67}\). “That I shall not sit in the shadow”, he is forbidden to sit in the shadow of a booth\(^\text{68}\). “That I shall not sit in the shadow of a booth,” he is flogged and sits in the shadow of a booth.

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47 In Mishnah 5.
48 Mishnah Makkot 3:2 Notes 27-32. *Tevel* is produce from which heave and the heave of tithe have not been removed, whose consumption except at harvest time is a deadly sin.
49 In R. Simeon’s opinion, biblical prohibitions are absolute, but infringing on a prohibition in a minute amount, for edibles less than the size of an olive, does not trigger the obligation of a sacrifice. Babli 24a.
50 He does not defend his point of view but shows his opponents that even in their opinion a complete fruit or animal is bibliically forbidden even if it is smaller than an olive but still visible with the naked eye. This is accepted as practice, cf. Berakhot 6:1, Notes 14-18.
51 Lev. 16:29.
52 Eating non-kosher food violates a simple prohibition; breaking the fast on the Day of Atonement is a severe sin subjecting the unrepentant sinner to extirpation. R. Simeon declares eating non-kosher food on the Day of Atonement as violation of a simple prohibition (which if committed inadvertently does not make the perpetrator liable for a sacrifice). If the stringent prohibition of the Day of Atonement does
not include forbidden food then an oath which never can lead to extirpation cannot include forbidden food either.

53 This refers to Mishnah Keritut 3:4, that a person may become liable for 5 sacrifices for eating one olive-size bite: an impure person who on the Day of Atonement ate sacrificial fat which was a leftover from a prior day. Eating fat is always forbidden; eating sacrificial fat is illegitimate use of sacra, classified as larceny (requiring restitution and a reparation sacrifice); eating any sacra while impure is punishable by extirpation. The mention of the Day of Atonement shows that the Mishnah is formulated for the Rabbis, not R. Simeon. The question then is, if the statement of R. Johanan be true that an oath containing a general prohibition also refers to things biblically prohibited, the Tanna, who obviously is looking for an example showing the maximum of criminal acts that can be committed by one action, should have added that the person who ate the fat had previously made an oath that he would not eat at all, for a total of 6 sacrifices. That no oath is mentioned in the Mishnah seems to prove that R. Johanan’s position is rejected by the Mishnah; it cannot be accepted in practice.

54 Since oaths have to be interpreted according to common usage, not lawyers’ jargon, an oath “that I shall not eat” will be interpreted as oath not to eat permitted food; the question of R. Abba bar Mamal does not apply. But an oath to become vegetarian is a valid oath and in Temple times would prevent the person from fulfilling the commandment of eating of the Passover sacrifice. Since in contrast to vows oaths cannot be dissolved by a rabbi, this is a case where a general oath supersedes a biblical commandment.

55 The Ten days of Penitence, from New Year’s day to and including the Day of Atonement. In this case breaking the fast is a double sin since it also means breaking the oath. The entire argument is for the Rabbis, so it includes eating non-kosher food.

56 This follows R. Simeon. If there can be no punishment for breaking the oath relative to the carcass meat then there cannot be one for eating the other 9 since the oath was for 10, not for 9 pieces.

57 Following R. Johanan it is difficult to find any oath involving meat that should be valid at all, since he requires an oath which forbids permitted foods; as a consequence it will also apply to prohibitions. But if somebody forbids himself anything which a person X will slaughter, the oath includes the fat of the slaughtered domestic animal forbidden by biblical standards. Since an original oath forbidding biblically forbidden things is void, the entire oath is voided. Similarly for wild animals, whose fat is permitted (Lev. 7:23), the hip sinew still is forbidden (Gen. 32:33), and the blood of a fowl is forbidden like the blood of four-legged animals (Lev. 7:27).

58 The difficulty encountered in the preceding paragraph can easily be circumvented if the oath is made on a piece of meat which does not contain any forbidden fat and is drained of its blood. Then the only problem is the problem that for R. Simeon the number of required sacrifices is not a measure of the number of prohibitions which were violated; the Tanna might want to formulate his statement to take care of R.
Simeon’s opinions also. But since the Mishnah requires a separate sacrifice for eating forbidden fat on the Day of Atonement, it certainly cannot be formulated for R. Simeon, who denies that the prohibitions of that day refer to forbidden food.

59 It is clear that the words in parentheses have to be switched, Note 52.

60 The Tanna of Keritut counts only the maximum of fixed-rate sacrifices; he could agree that with an oath a liability for a variable rate sacrifice could be added. Nothing can be inferred about the disagreement between R. Johanan and R. Simeon ben Laqish.

61 The previous explanation is incorrect. The Tanna of Keritut mentioned a sacrifice for eating sancta in impurity; this requires a variable value sacrifice.

62 The previous explanation is incorrect. The Tanna of Keritut mentioned a sacrifice for illegally appropriating Temple property for private use. There is no extirpation mentioned for this, only restitution with a fine and a reparation sacrifice (Lev. 5:14-16). Only fixed-rate purification offerings are restricted to atoning for unintentional sins carrying a penalty of at least extirpation, not reparation sacrifices. This finally yields the correct answer.

63 Since oaths may be made for a certain time only.

64 Nothing mentioned here but the end of Mishnah Keritut 3:4 where R. Meïr says that if it was on a Sabbath and the person brought the piece of meat between his teeth from a private to a public domain he is liable for an additional sacrifice.

65 The rules for the Sabbath specify 39 categories of forbidden work (Mishnah Šabbat 7:2), each of which triggers liability for a separate sacrifice. Since the anonymous Tanna placed the case on the Day of Atonement, and any work forbidden on the Sabbath is forbidden on the Day of Atonement, R. Meïr could simply have added carrying also on the day of Atonement. Since he has to place that Day on a Sabbath, it follows that any and all infringements of the sanctity of the Day of Atonement trigger the same liability of a sacrifice. There never can be more than one for a given Day. The conclusion of the Babli, Keritut 14a, is formulated more narrowly: Transporting from domain to domain is not a separate desecration of the Day of Atonement.

66 This remark is quite obvious. In general, any purification sacrifice only covers deeds made during one period when the person was oblivious either of the holiday or of the particular prohibition which he violated.

67 While leavened bread is forbidden for seven days on Passover, there is a positive commandment to eat unleavened bread only on the first night (Ex. 12:18; cf. H. Guggenheimer, The Scholar’s Haggadah, pp. 328-329.) An oath not to fulfill this commandment is void; the oath is void and incurs the penalty of void oaths. But an oath never to eat unleavened bread is valid and prevents its maker from fulfilling his duty without breaking the oath.

68 On the festival of Tabernacles, Lev.23:42. The argument is totally parallel to that of the preceding example.
Not only unspecified, but even “X”. Not only comprehensive but even in detail. Not only in the future but also in the past. Not only the rabbis but even Rebbi Aqiba. Not only carcass and torn meat but even dust\(^69\). He wants to teach himself a pretext\(^70\).

\(^69\) The Babli (24a) explicitly declares ingesting dust as not eating.

\(^70\) This refers to the last sentence in Mishnah 5. Since this refers to a vow, which may be annulled by a rabbi or a court, all the restrictions described for oaths are eliminated. Even if he made his vow dependent on minute details, or refers to something in the past, or to minute quantities, or even to worthless things, the vow is valid since he only wants to find a pretext to divorce his wife.

Mishnah 6: Whether matters of himself\(^71\), or matters of others, or material matters, or immaterial matters. How is this? An oath that I shall give to X, or that I shall not give, that I gave, or that I did not give, that I shall sleep, or that I shall not sleep, that I slept, or that I did not sleep, that I shall throw a pebble into the sea, or that I shall not throw, that I threw, or that I did not throw. Rebbi Ismael said, he is liable only for the future, for it is said to cause evil or cause good\(^72\). Rebbi Aqiba said to him, if it is so then this refers only to matters of causing evil or good; from where matters which do not refer to causing evil or good? He answered him, from the additional text of the
verse. He answered, just as the additional text of the verse is for this, the additional text of the verse is for the other.

All the rules of liability for a variable value sacrifice spelled out in the preceding Mishnaiot are valid for all kinds of oaths irrespective of their content or meaning.

Lev. 5:4. The causative refers to the future.

The continuation of the quote.

Halakhah 6: “Whether matters of himself,” etc. Rebbi Abba in the name of Samuel: “An oath that X gave a mina to Y,” and it turns out that he did not give, since it was not in his power for the future, it is not in his power for the past.

Rebbi Yose objected, about phylacteries there is nothing about the future but there is about the past! He told him, phylacteries came from another source. To cause evil or cause good; just as doing good is optional so doing bad is optional; this excludes anything involving a prohibition or anything involving a permission. Anything which one will blurt out, excluding a minor. A person in an oath, excluding a person not acting at his own will. And it will be forgotten by him, he will be oblivious of the oath. Or could I think that the object was forgotten by him? The verse says, in an oath and it was forgotten by him; he is liable for forgetting the oath; he is not
liable for forgetting the object. Could one not add forgetting the object to forgetting the oath so that he should be liable? What is the difference between this and forgetting impurity and forgetting the Sanctuary so that he should be liable twice following Rebbi Ismael, who said forgetting impurity and forgetting the Sanctuary\textsuperscript{80}? There it is written \textit{it was forgotten by him, it was forgotten by him} twice\textsuperscript{81}. Here it is written \textit{it was forgotten by him} once. I could think that one who swears to the detriment of others should be liable: the verse says, \textit{to cause evil or cause good}; just as doing good is optional so doing bad is optional\textsuperscript{82}. I shall exclude one who swears to the detriment of another that he should not be liable. For example, if one swears that he will not provide food for another. He saw him in convulsions and gave to him. He never could swear that X will give Y since it is not in his power to force X to give. This is all about liability for a variable sacrifice, not monetary liabilities. Since witnesses do not swear, this is not a case of perjury.

76 If somebody swore falsely that he put on \textit{tefillin} he is liable for a sacrifice (Mishnah 9).

77 The expression \textit{ערתי “permission” probably is induced by the usual opposites prohibition - permission. What really is intended here is \textit{(pointer “commandment” which is the opposite of something optional; Sifra Hova (Wayyiqra 2) Parashah 9(6), Babli 27a.}

78 Whose words have no legal consequences.

79 \textit{Sifra Hova (Wayyiqra 2) Parashah 9(9), Babli 26a. This includes even a person acting by his own will on false information or false remembering.

80 Chapter 1, Note 23.

81 \textit{Sifra Hova (Wayyiqra 2) Pereq 12(7), Babli 14b; Mishnah 2:6.

82 Since harming anybody is forbidden, an oath to harm another person does not trigger liability for a sacrifice if it is broken. The example shows that in this case breaking the oath may be a meritorious act. Babli 27a.
How does Rebbi Ismael explain the verse? 

Or a person, if he would swear blurt out with his lips, a general statement. To cause evil or cause good, a detail. A general statement followed by a detail; the general statement contains only what is in the detail. But the detail only contains matters of causing evil or good! But it is so: To cause evil or cause good, a detail. Anything which a person will blurt out, a general statement. A detail followed by a general statement, everything is included; this adds matters directed towards the past. But it is so: Or a person, if he would swear blurt out with his lips, a general statement. To cause evil or cause good, a detail. Anything which a person will blurt out, a general statement. A general statement followed by a detail followed by a general statement, you only argue in the pattern of the detail. Since the detail is explicit, matters of causing evil or good, from where matters not causing evil or good? He answered him, from the additional text of the verse. He answered, just as the verse added for this, the verse added for the other. You cannot, as Rebbi Hila said in the name of Rebbi Eleazar: So did Rebbi Ismael answer Rebbi Aqiba. Do we find cases where one is liable for intentional action because of a false oath but if in oblivion because of a blurted oath? Could he not have objected, do we find cases where one is liable for intentional action because of a false oath and he has to bring a sacrifice? He said to him, do you agree that there are cases which are not matters of causing evil or good, even if they are not written? He told him, even though I accept cases which are not matters of causing evil or good, are they only written if they be matters of causing evil or good? Therefore never for the past.

83 In the version of Sifra (Introduction 1), in the list of the thirteen hermeneutical principles of R. Ismael one finds (5) a general statement followed by a detail, (6) a detail followed by a general statement, (7) a general statement followed by a detail followed by a general statement you only argue following the pattern of the detail, (8)
SHEVUOT CHAPTER THREE

a general statement dependent on the detail, (9) a detail dependent on the general statement. Rules 8 and 9 mean that if the general statement can only be understood by the detail or vice versa, rules 5 and 6 do not apply. It then is explained in §7 that if a general statement is followed by a detail, only the detail is intended. §8: If a detail is followed by a general statement, the general statement adds to the detail. Examples are Lev. 1:2: *From animals, from cattle, or from small cattle*. This implies that sacrifices are restricted to cattle, sheep, or goats. Ex. 22:9: *A donkey, an ox, a sheep, or any animal*. The rules of caretakers apply to any animal. Then it becomes a problem how to treat a verse which contains general statement, detail, general statement, whether to apply rule 5 (eliminating the final general statement by rule 9), or rule 6 (eliminating the first general statement by rule 8), or rule 7. In the preceding derivation, the arguments have been suppressed that rules 8 and 9 do not apply and, therefore, only rule 7 is relevant. The standard example for an application of rule 7 is Deut. 14:26, about permitted uses of Second Tithe money at the place of the Sanctuary: *You may spend the money for anything you desire* (general), *for cattle, or small cattle, or wine, or liquor* (detail), *or anything you wish* (general). The common denominator of the items in the detail describes animal or vegetable food; Second Tithe money can be used for any food derived from animals (generated from semen) or plants (growing from seeds).

Since the first part of Lev. 5:4 fits Rule 7, it is clear that the rule applies not only to oaths intended to cause good or evil but to a larger set of oaths which, however, have to conform to the idea underlying “causing good or bad things”. Obviously one of the ideas is that events caused are later in time than the cause. This is R. Ismael’s interpretation of the verse. Babli 26a.

84 Quote from the Mishnah.
85 This is not an additional argument. The additional text shows that the rule to be applied is rule 7, not rule 5. R. Aqiba follows a different system. For him the sentence structure is not general, detail, general but expansive, restrictive, expansive, which he reads as including everything except what is completely different from the detail quoted as restriction.

86 The text of R. Aqiba’s answer is the text of the Mishnah in the Babli. It is known that the separate Mishnah in the Yerushalmi is not from the Yerushalmi text. The Mishnah text in Maimonides’s autograph is that of the separate Yerushalmi Mishnah.
87 The Mishnah cannot be quoted as proof that R. Ismael conceded to R. Aqiba.
88 R. Aqiba to R. Ismael.
89 Since they are not mentioned in the verse. For יִלְּל read יִלְּל. It is obvious from rule 7 that the obligation of a variable sacrifice for a blurted oath must hold for a larger set than “causing bad or good things”. The only problem is to define this larger set and the causative employed definitively excludes oaths regarding the past. The Tanna of the Mishnah cannot accept R. Ismael’s hermeneutical rules.
Mishnah 7: If he swore not to observe a commandment but failed not to observe it, he is not liable\(^2\); to observe a commandment and did not observe it, he is not liable\(^3\), though it would have been logical that he should be liable, the words of Rebbi Jehudah ben Bathrya. Rebbi Jehudah ben Bathrya said, since he is liable for a permitted purpose, for which he is not sworn to from Mount Sinai, is it not logical that he should be liable about a commandment to which he is sworn from Mount Sinai?\(^2\) They said to him, no. What you say about an oath for permitted purpose where He made “no” equal to “yes”, can you say that about an oath concerning a commandment, where He did not make “no” equal to “yes”? Since one who swears not to observe a commandment but failed not to observe it, is not liable\(^4\).

92 Since the oath is void, he is prevented from sacrificing if it was unintentional. If it was intentional he can be prosecuted for a vain oath, forbidden in the Ten Commandments.

93 The oath to keep the commandments is valid (Ps. 119:107); why does breaking this valid oath not imply liability for a sacrifice or criminal prosecution?

94 In matters not involving biblical precepts, an oath is valid whether formulated in the positive or negative. But for biblical precepts King David already did decide that one may swear to keep them (Ps. 119:106); only oaths to break commandments are intrinsically void.
Halakhah 7: “If he swore not to observe a commandment,” etc. Rebbi Mani said, so is the Mishnah: “He is liable, the words of Rebbi Jehudah ben Bathya.⁹⁵” What Rebbi Jehudah ben Bathya said refers to prohibitions in general. “An oath that I shall eat carcass meat,” but he did not eat it. He is not liable. “An oath that I shall eat,” and he ate⁹⁶. If you would say that he is liable, they should have objected to him: No. You declare about an oath for permitted purpose where He made “no” equal to “yes” and “yes” equal to “no”, can you declare this about an oath concerning a commandment, where He did not make “no” equal to “yes”?⁹⁷

From where a warning about an oath for a permitted purpose? Rebbi Yose ben Rebbi Abun said, he shall not profane his word⁹⁸, he shall not make his words profane⁹⁹.

⁹⁵ Since R. Jehudah ben Bathya gives an argument to hold a person liable if he breaks any oath, R. Mani wants to read simply “he is liable, the words of R. Jehudah ben Bathya”.

⁹⁶ Everybody, including R. Jehudah ben Bathya, agrees that somebody who breaks an oath to break a Torah commandment is never liable for a sacrifice. The only problematic cases are somebody who keeps an oath to break a Torah commandment or who breaks an oath to keep a commandment. In both cases he might be liable to prosecution for breaking the commandment; the only question here is whether he is liable for a sacrifice, which is answered in the negative by the majority and in the positive by R. Jehudah ben Bathya.

⁹⁷ Oaths about profane subjects may be formulated either as declarations of intent to do something or to refrain from it; about biblical precepts the only admissible ones are to keep the commandments. For R. Mani’s interpretation of R. Jehudah ben Bathya’s argument to hold, the Mishnah should have been formulated differently. As it stands, the formulation of the Mishnah has to be accepted and R. Mani’s correction rejected.

⁹⁸ Num. 30:3, the paragraph about profane vows. Babli 21a.

⁹⁹ He translates biblical into rabbinic Hebrew.
**Mishnah 8:** “An oath that I shall not eat this loaf, an oath that I shall not eat it, an oath that I shall not eat it;” he is liable only once\(^{100}\). This is the blurted oath\(^{101}\) where in case it be intentional one is liable for flogging\(^{102}\), and if unintentional for a variable sacrifice.

\(^{100}\) He made three oaths but the second and third are void since they forbid what already is forbidden.

\(^{101}\) It is the paradigm for all rules about “blurted oaths”.

\(^{102}\) If he was duly warned not to break his oath but broke it before witnesses he can be prosecuted in criminal court for breaking the commandment of *he shall not profane his word*.

**Halakhah 8:** “An oath that I shall not eat this loaf,” etc. “An oath that I shall eat this loaf today,” the day passed and then he ate it. Rebbi Johanan and Rebbi Simeon ben Laqish both say, he is not liable; not for the same reason. The reason of Rebbi Johanan, because he cannot be duly warned\(^{104}\). The reason of Rebbi Simeon ben Laqish, because it is a prohibition without action\(^{105}\). What is the difference between them? He burned it or threw it into the sea. If you say, because he cannot be duly warned\(^{106}\), he is not liable. If you say, because it is a prohibition without action, there is an action.

\(^{103}\) Criminal liability.

\(^{104}\) No criminal prosecution is possible without evidence that the criminal was duly warned not to commit the crime (cf. *Introduction to Tractate Sanhedrin*, on Chapter Five). The warning must be delivered shortly before the criminal act, so the accused cannot claim to have forgotten. In this case criminality would be inaction; this is not subject to warning.

The Babli, 3b, brings the same example and connects this with the dispute between R. Johanan and R. Simeon ben Laqish whether a warning can be delivered even if it is conditional because there is no certainty that the contemplated action will be criminal (Yebamot 11:7 Note 171, Nazir 8:1 Note 48, Pesahim 5:4 fol. 32c; Babli 3b). Since R. Johanan holds that a conditional warning is acceptable, the Babli is forced to switch the attributions in this case. As a consequence it follows that for
the Yerushalmi here, in R. Johanan’s opinion this would not be a conditional warning but one which it is impossible to deliver. (In his Notes to Tosaphot s. v. לבלב בלא בא יא, Babi 4a, R. Akiba Eiger essentially notes that the Babi’s argument cannot be read into the Yerushalmi.)

Rebbi Phineas asked, if he was asthenic? Since it is not in his hand for the future, it is not in his hand for the past.

Rebbi Yose asked, “an oath, an oath, an oath, that I shall not eat,” and he ate. What is the rule? Rebbi Yose ben Rebbi Bun said, let us hear from the following: “An oath that I shall not eat this loaf, an oath that I shall not eat it, an oath that I shall not eat it; he is liable once.” Because he mentioned this. Therefore, if he did not mention this, he would be liable for each single one.

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105 Cf. Note 3.
106 Even if the witnesses are present at the moment when the loaf is thrown into the sea he cannot be warned since what he does is not breaking the oath but making its fulfillment impossible; there is no biblical paragraph prohibiting this action.

107 Greek ἔσθενις. He is unable to eat an entire loaf during the day and he knows it. Therefore it is a false oath, not a blurted one.

108 Since he specified the loaf in the first oath, the others were vain. But if it was not specified, the oaths are concurrent but separate and each one carries its own liability. This is amplified in the next paragraph.
Abime the brother of Hefa 109 said, I had studied Nedarim and Ševuot; Hefa wanted to examine him. He had before him five loaves and said, an oath that I would not eat this loaf. He returned and said, these two. He returned and said, these three. He returned and said, these four. He returned and said, these five. Then he ate the first. He 110 said to him, he is liable for each single one 111. He 112 answered, he is liable only once, for when he mentioned the first he made it like carcass meat; the following make an oath fall on something prohibited and oaths cannot fall on prohibitions 113.

Hefa continued to examine him. He had before him five loaves and said, an oath that I would not eat these five loaves. He returned and said, these four. He returned and said, these three. He returned and said, these two. He returned and said, this one, and ate the first one. He 110 said to him, he is liable only once 114. He 111 answered, he is liable for each single one; if somebody said “an oath if I would eat five loaves” and he ate four, is he not free from liability 115?

Rebbi Yose said, the brother of Hefa seems to be reasonable in the later case and Hefa in the prior.

109 He is called אָבִים in the Babli 28b, where their dispute is about other cases and Hefa always has the correct answer. They are Babylonian Amoraim of the fourth generation.

110 Abime.

111 Since each oath adds to the preceding prohibition, even R. Johanan should agree that the addition in each oath is valid (Note 42).

112 Hefa.

113 R. Johanan will agree that successive additions of prohibitions are valid only if the prohibitions vary in kind, not if the domain of applicability of one prohibition is enlarged.

114 Since 4, 3, 2, 1 all are contained in 5, all oaths following the first are void.

115 Since he did not eat five, he did not break the oath. In this case, instead of “not liable” one should say “permitted.”
Mishnah 9: For an intentional vain oath one is liable to be flogged; if in error one is not liable. What is a vain oath\textsuperscript{116}\textsuperscript{?} One swears to change what is known to man, about a stone pillar that it is of gold, a man that he is a woman, or a woman that she is a man. One swears about an impossibility, if I did not see a flying camel, if I did not see a snake like the beam of the olive press. If one said to witnesses come and testify for me, an oath that we shall not testify for you\textsuperscript{117}. One swears not to keep commandments: not to make a booth\textsuperscript{68}, not to take the lulav\textsuperscript{118}, not to put on phylacteries\textsuperscript{119}; these are vain oaths for which one is liable to be flogged if intentional, and free from prosecution of unintentional.

\textsuperscript{116} An oath which either is obviously false or one which he is forbidden to keep.

\textsuperscript{117} This is sinful if they know testimony,

\textsuperscript{118} The palm branch with accompanying greenery.

\textsuperscript{119} Therein to the end of Halakhah 10, the text also is in \textit{Nedarim} 3:2 (\textit{P}), explained there in Notes 37-78.

\textsuperscript{120} In \textit{Nedarim}: Julianus Caesar. This is the correct text since Diocletian never made...
“If I did not see a snake like the beam of the olive press.” 121 Did not the snake of king Sapor swallow camels and carts? When they wanted to kill it, they filled camel bags with straw and put glowing coals inside; it swallowed them and died. Rebbi Jehudah bar Pazi said, I saw the hide of a snake made over eight spaces between pillars122. Rebbi Samuel ben Jacob said, I saw the hide of a snake covering a state coach123. Samuel said, square. If square one could state even a small one124. Rebbi Yudan the father of Rebbi Mattaniah said, so it is. It is the way of this Tanna to use only big words, as we have stated: “A flying camel.” Could he not have stated, “a flying rat”?

121 The text in Nedarim either is from another textual tradition or is rather corrupt.
122 Greek μεσοστόλων “space between columns.”
123 Latin carruca “travel coach”.
124 In Samuel’s opinion a square snake is more wonderful than an oversized one since nothing in nature is square, as stated later in the text.

It was stated: Rabban Simeon ben Gamliel says, there is nothing square from the six Days of Creation. Rebbi Berekhiah objected: Did we not state: “The body of baheret is like a square Cilician grit. The place for a grit is nine lentils. The space for a lentil is four hairwidths; in all 36 hairwidths.” 126 Rebbi (Yosna)127 said, that in itself says that there is no square. Why was it stated

war “there”, i. e., in Babylonia.
“squared”? That he should square it\(^{128}\)? And \(\text{ככעה}\)? It is full of knots. But there is the bunch of \(\text{pila}\)\(^{130}\)! It is round below. Some wanted to say, Rabban Simeon ben Gamliel said this only about creatures, There is square in foods, there is no square in creatures.

\(^{125}\) This paragraph in addition is from \(\text{Ma`serot 5:7, Notes 122-129}\).

\(^{126}\) Mishnah \(\text{Nega`im 6:1}\). Cf. Chapter 1, Note 4.

\(^{127}\) For the otherwise unknown name \(\text{סמש}\) the other two sources read the well-attested name Bisna.

\(^{128}\) Determine its surface area, standard Euclidean terminology.

\(^{129}\) The text in \(\text{Ma`serot}\) reads \(\text{ככעה}\), in \(\text{Nedarim}\) \(\text{ככעה}\). The latter probably is the correct text, “lice”.

\(^{130}\) A kind of spice, cf. \(\text{Ma`serot}\) Note 129. Possible Latin \(\text{pila}\), among other meanings also “ball, globe” (E. G.).

\(^{131}\) “An oath that we do not know testimony for you;” they are flogged because of witnesses’ oath\(^{132}\). “An oath that we shall not testify for you;” they are flogged because of blurted oath\(^{133}\).

\(^{130}\) This paragraph is not in one of the parallels.

\(^{131}\) If it can be shown that they committed perjury and were duly warned.

\(^{132}\) Rashba (\(\text{Novellae on Tractate Ševuot,}\) on 26b, in the edition by J. D. Ilan, Jerusalem 1993, col. 97, Note 145) declares this unintelligible since it contradicts Mishnah 4:2.

\(^{133}\) Since by the first oath he became obligated to eat the loaf by biblical rules, the second oath has a similar status as an oath to violate a biblical commandment.
Halakhah 10: “An oath that I shall eat this loaf;” etc. 133 Vain and untruth both were said together, which is impossible for the ear to hear and the mouth to say. Its desecrator shall be put to death and on the Sabbath day two sheep134 were said together. Do not wear ša`at on the Sabbath day. 135 A shortened version of a paragraph in Nedarim 3:2 (Notes 50-59) and the texts quoted there. The general topic are pairs of pentateuchal verses which seemingly contradict one another. 136 Lev. 18:16, Deut. 25:5.
137 Num. 36:8-9.
138 Ps. 62:12.
139 Jer. 23:29. The reference is to the end of the verse, and like a hammer splintering rock.
134 Ex. 31:14, Num. 28:9.
135 Deut. 22:11-12.

A vain oath, if one swears to change what is known to men; a false oath if he swears to substitute. Rebbi Jacob bar Aha in the name of Rebbi Johanan: anything known to two persons is a (vain) oath, to three it is (false).141
Rebbi La in the name of Rebbi Eleazar: If it is known to two persons and another one at the end of the world, it is a vain oath. What is the difference between them? If he was untrue before two [persons], threw it into the sea, and they had warned him because of a vain oath; in the opinion of R. Johanan he is not flogged, in the opinion of Rebbi Eleazar he is flogged. If they had warned him because of a false oath, in the opinion of Rebbi Eleazar he is flogged, in the opinion of Rebbi Johanan he is not flogged. Rebbi Abba in the name of Rebbi Jehudah, even an egg and a pearl. What means “even”? But, for example, an egg and a pearl.

140 A corrupt copy of the text in Nedarim 3:2, Notes 60-65. R. La (Ulla) is quoted in the Babli, 29a.
141 One has to exchange “vain” and “false” as in Nedarim. A vain oath is obviously vain, a false oath is materially false but may not generally be seen as such.
142 With the Nedarim text, one has to switch “flogged” and “not flogged”.
143 With Nedarim read: Rav.
144 Reading dv¥ instead of dv¥; it may not be a scribal error but a dialectal identification of ש for ש.
property is forbidden [to him]. But in matters of flogging, he cannot be flogged.


Hizqiah said: he who swears that two are two is flogged for a vain oath. Rebbi Menahem in the name of Rebbi Simeon ben Laqish: He who saw rain falling and said קִנְיָאָה פְּלֵא βְרֵאֱהוֹן is flogged for a vain oath. Rebbi Onias, Rebbi Jacob ben Rebbi Abun in the name of Rebbi Samuel ben Nahman: 24 city councils were in Judea and they all were destroyed because of true vain oaths, as it is written: For the vain did I hit your sons.

146 In Nedarim: Haggai. contraction קִנְיָאָה. The statement shows that קִנְיָאָה was accepted as a Divine Name.

147 O Lord, make it rain a lot (Musaphia). The invocation of the Lord is considered a violation of the Third Commandment. It is possible to read the first word as a contraction קִנְיָאָה. The statement shows that קִנְיָאָה was accepted as a Divine Name.

148 Greek βουλή.

149 Jer. 2:30.

Mishnah 11: A blurted oath applies to men and women, relatives and unrelated persons, qualified and disqualified persons, before a court or out of court, from his own mouth. For intentional violation one is liable to flogging, for unintentional [to bring] a variable sacrifice.

150 This list is quite unnecessary here, it would have been sufficient to say that the rules of blurted oaths apply to every competent adult. The details are listed in
contrast to the rules for witnesses’ oaths which are restricted to unrelated qualified males made to swear by others. Excluded relatives are enumerated in Sanhedrin 3:7, disqualified persons in Sanhedrin 3:6.

Halakhah 11: “A blurted oath,” etc. 151“ An oath that I shall not eat this loaf, an oath that I shall not eat it’, he is liable only once.100 Something which would be forbidden for vows and is permitted for oaths.152 Not on this was it said but on the following: “Whether matters of himself71, or matters of others,” as Rebbi Abba said in the name of Samuel: ‘An oath that X gave a mina to Y.’ If it turns out that he had not given, since it is not in his hand for the future it is not in his hand for the past.75 It was found stated on both cases: This is more stringent for the past than for the future: If he says “I shall not
eat, I shall not eat,” he is liable only once. “I did not eat, I did not eat,” he is liable for each single time.

“An oath that I shall eat this loaf; an oath that I shall not eat it.” The first one is a blurted oath, the second a vain oath. How does one deal with him? One tells him to eat; it is better to break a vain oath than a blurted one.

“An oath that I shall not eat this loaf; an oath that I shall eat it.” The first one is a blurted oath, the second a vain oath. How does one deal with him? One tells him not to eat; it is better to break a vain oath than to break a vain and a blurted one.

“An oath that I shall eat this loaf today; an oath that I shall not eat it today.” Then he ate it. Rebbi Johanan said, he kept the first oath and invalidated the second. Rebbi Simeon ben Laqish said, he invalidated the first one and did not keep the second.

“An oath that I shall not eat this loaf today; an oath that I shall eat it today.” Then he ate it. Rebbi Johanan said, he invalidated the first oath and kept the second. Rebbi Simeon ben Laqish said, he invalidated the first one. One tells him to keep the second with another loaf.

“An oath that I shall eat this loaf today; an oath that I shall eat it today.” Then he ate it. Rebbi Johanan said, he kept both of them. Rebbi Simeon ben Laqish said, he kept the first one and one tells him to keep the second with another loaf.

“An oath that I shall not eat this loaf today; an oath that I shall not eat it today.” Then he ate it. In Rebbi Johanan’s opinion he is twice liable. Is he only once liable in Rebbi Simeon ben Laqish’s opinion? Even Rebbi Simeon ben Laqish agrees that he only emphasizes the prohibitions.

151 There is a parallel in Nedarim 3:2, Notes 74-78, which is not an exact copy. While repeated vows are separate obligations, of repeated identical oaths only the first is valid; the others are vain oaths. There is no notion of a vain vow.

152 It is not really permitted for oaths since the second oath is vain, but the second never has the status of a valid oath.

153 In the first case, the first oath creates a prohibition; no oath can be made concerning an existing prohibition. In the second case, a false statement is reinforced by an oath; there is no upper limit on the number of lying oaths a person might make.

154 The reading of Rosh (#24) is: It is better to break a vain oath than blurted and vain ones. The two oaths have completely
different status: Since the second one is vain at the moment it is made, the making of the vow is sinful and its maker is liable to be flogged. The only active oath is the first and this one has to be kept.

155 For R. Johanan, the valid first oath prohibits the making of the second which automatically becomes a vain oath subject to the statutory punishment for vain oaths but irrelevant as oath. R. Simeon ben Laqish notes that the first oath contains a promise, not a prohibition. Therefore, there is no rule which prohibits making the second oath. Making the second oath is sinful because it invalidates the first but from the point of view of the law of oaths it is possible. Since he becomes liable for punishment for breaking the first oath, the second is active and should be kept. By eating the loaf, the person commits a second sin.

The Babli, 28b, has a completely different taking on this problem and refers it to the problem whether a criminal warning is possible if it is not clear that a criminal act was intended (Note 104).

156 Swearing the second oath was a criminal act. Since the second is not a prohibition, it can be fulfilled.

157 Since he said אֲכָלַת אֱכֶל בִּרְכָּר ("I shall eat it") and not אֲכָלַת אֱכֶל וָאָכָל בִּרְכָּר ("I shall eat this loaf") it is better to interpret it as not referring to the same loaf as does the first oath. Then while nothing can be done to mitigate the sin of breaking the first oath, the second oath can be changed from a vain oath to a new, valid oath referring to something different, not connected with the first.

158 This is a situation similar to the preceding one. For R. Johanan, the second oath is vain, subject to punishment as such, but kept by keeping the first. For R. Simeon ben Laqish the second oath is not vain if it is interpreted as referring to another loaf; both oaths can be kept without sin.

159 Once for breaking the oath, and once for uttering a vain oath.

160 By referring the second oath to an indefinite other loaf.

161 In this case, R. Simeon ben Laqish might agree that the repetition indicates reinforcement and that any reasonable interpretation must refer both oaths to the same loaf, agreeing in this case with R. Johanan.

Mishnah 12: A vain oath applies to men and women, to relatives and unrelated persons, to qualified and disqualified ones, in court and out of court, and by his own words. For intentional violation one is liable to flogging,
for unintentional he is not prosecutable. In both cases, one who is sworn to by another person can be liable. How is this? One said, “I did not eat today, I did not put on phylacteries today.” “I want you to swear to it,” if he said “Amen” he is liable.

The Third Commandment contains no determination of the punishment. Therefore it can be prosecuted as a standard infraction, punishable by flogging only after due warning and swearing in the presence of two eye witnesses.

Blurted and vain oaths.

The person who is challenged to swear. By answering Amen he has sworn even though he himself did not utter any oath nor invoke the Divine Name.

Halakhah 12: “A vain oath,” etc. A person, a person. Since by a person which was said for an oath of testimony He made the one at whom the oath was directed like one swearing, so also by a person which was said for an oath of deposit He made the one at whom the oath was directed like one swearing.

The text here can be understood by a comparison with Halakhah 4:8. Lev. 5:1 starts: But a person who would sin. V. 21 starts: A person who would sin. The topic of v. 1 is a person whom another person makes swear indirectly (Note 164) that he will testify in court on his behalf but who then reneges on his promise, thereby breaking his oath. V. 21 describes a person who commits sacrilege towards the Eternal by lying to his fellow man about a deposit, or a partnership, or robbery. One commits sacrilege by swearing falsely. The parallel language implies that swearing falsely about money matters does not necessarily mean to utter a formal oath. The sin of swearing falsely also has been committed if the injured party says to the accused in the presence of witnesses, “swear to me that you do not owe me” and the person then answers “Amen”.

(35a line 28) (35b line 26)
This is the principle\(^{166}\). One flogs for any prohibition involving an action, but one does not flog if there is no action except for one who substitutes\(^{167}\), or swears, or curses a fellow man by the Name. Rebbi Abbahu in the name of Rebbi Johanan: This does not include one who substitutes; substituting implies speech and action\(^{167}\). From where one who swears falsely? Rebbi Johanan in the name of Rebbi Yannai: \textit{For the Eternal will not cleanse}; but the judges will cleanse him\(^{168}\). From where one who cursed his fellow man by the Name? Rebbi Simeon ben Laqish in the name of Rebbi Hoshaia: \textit{To fear the Name}\(^{169}\), etc. The one who swears falsely in the opinion of Rebbi Simeon ben Laqish from where? Since he swore falsely, he does not fear. The one who cursed his fellow man by the Name in the opinion of Rebbi Simeon ben Laqish from where? Since he cursed, he does not fear. What is the difference between them? If one swore falsely and cursed a fellow man by the Name. In Rebbi Johanan’s opinion he is liable for two \([\text{punishments}]^{170}\). In Rebbi Simeon ben Laqish’s opinion he is only liable for one.

\(^{166}\) Babli 21a, \textit{Makkot} 16a, \textit{Temurah} 3a. In the Babli the formulation of this (undisputed) principle is attributed to R. Yose the Galilean.

\(^{167}\) Before an animal can be sacrificed, it has to be sanctified by dedication (\textit{Lev.} 27:9). Once sanctified, it is forbidden to substitute another animal (v. 10). If somebody would substitute, both the original and the substitute are dedicated. Therefore the oral declaration of substitution is at the same time the real act of sanctification which makes the animal prohibited for all profane use. This argument is not found in the Babli. already

\(^{168}\) \textit{Ex.} 20:7, \textit{Deut.} 5:11. As the Babli explains, if the verse simply had said “he will not be cleansed”, then a vain or false oath would be an unpardonable sin. But since it said, \textit{the Eternal will not cleanse}, it implies that punishment by the earthly court will remove the sin from the Heavenly ledger.

\(^{169}\) \textit{Deut.} 28:58. While the language is that of a positive commandment, the context shows that its violation is punishable.

\(^{170}\) Since the two offenses violate two different prohibitions. But for R. Simeon ben Laqish they are repeated violation of the same law, punishable only once.
Mishnah 1: An oath about testimony\(^1\) applies to men but not to women\(^2\), to unrelated persons but not to relatives\(^3\), to qualified but not to disqualified ones\(^4\); it applies only to those admitted to testify\(^5\), in court and out of court, and by the person’s own words. By the words of others they only become liable if they renege before a court, the words of Rebbi Meïr. But the Sages say, whether by the person’s own words or by the words of others they only become liable if they renege before a court\(^6\).

1 *Lev.* 5:1 requires a variable value sacrifice by a person who *heard an imprecation when he had knowledge* and refuses to testify. This is read to mean that a person is approached by a party in a civil suit and asked to testify in their behalf. If then either he swears an oath that he will testify in court (“by his own word”) or the party asks him to swear that he will appear (“by the word of others”) while he answers “Amen” but does not utter an oath by himself, he becomes liable for the sacrifice if he reneges on his commitment.

2 Since women are not admitted as formal witnesses in court, the rule of an oath of testimony cannot apply to them.

3 Since relatives are barred from appearing as witnesses in court, the rule of an oath of testimony cannot apply to them.

4 Felons are not permitted to appear as witnesses in court; the rule of an oath of testimony cannot apply to them.

5 Even if their disability only is a rabbinic tradition they will not be heard and the rule of an oath of testimony cannot apply to them.

6 Since testimony is used only in court, a refusal to testify outside of court is irrelevant and cannot trigger liability.
Halakah 1: “An oath about testimony,” etc. Rams, the minimum of rams are two. Why does the verse say two? That they be equal.

Sheep, the minimum of sheep are two. Then why does the verse say two? That both be equal.

The minimum of birds are two. Then why does the verse say two? that both be equal.

Rebbi Haggai objected to Rebbi Yose. Is there not written: The two men shall stand? Now, is not two the minimum of “men”? Why does the verse say two? That both be equal? But it is written: Do not bend the lawsuit of the proselyte, the orphan, . . . That means that a proselyte can have a lawsuit against one who is not a proselyte, an orphan may have a lawsuit against one who is not an orphan, a widow against a married woman. Then why is there
written two? It is free to be combined and to infer from it an equal cut. It is said here two and it is said there two men were left. Since there one speaks of men but not women nor underaged, also here men but not women nor underaged. From this we learn that a woman may not be a judge; consequently a woman may not be a witness.

Rebbi Yose ben Rebbi Abun, Rebbi Huna in the name of Rebbi Yose. It is said here two and it is said there by the mouth of two witnesses. Since there it must be by the testimony of two witnesses, also here by the testimony of two witnesses. Then why does the verse say two? Lest one of them be standing while the other be sitting; one says everything he has to say, but to the other one says, make your statement short. With one he puts up, to the other he is unfriendly.

Rebbi Jehudah said, I heard that if the judge wants to let both of them sit, he may tell them to sit down. What is forbidden is that not one be standing and the other sitting; one says everything he has to say, but to the other one says, make your statement short. Rebbi Ismael says, one says to him, either you dress as he is dressed or pay him to be dressed as you are.

Rebbi Abba said in the name of Rav Huna: The witnesses have to stand while testifying. What is the reason? The two men shall stand. Rebbi Jeremiah in the name of Rebbi Abbahu: Also the parties have to stand at the moment the verdict is given. What is the reason?: Who have the quarrel before the Eternal.

7 This text essentially is Sanhedrin 3:10, Notes 150-165, with a related text in Yoma 6:1. The many parallels in Babli (30a,b, Yoma 62b), Tosephta, and halakhic Midrashim are indicated in Sanhedrin.
8 Lev. 16:5,7,8. Any indeterminate plural means 2, the minimum of many.
9 Ex. 27:38, Num. 28:3.
11 Num. 10:1.
12 This is the correct reading, also given in Yoma, not R. Yasa as in Sanhedrin.
14 Deut. 24:17.
15 Num. 11:26.74
16 Here it seems better to read “Rav Joseph” with the other two sources.
17 Deut. 19:15.
It is written: Fathers shall not be killed because of sons. Is it not already written, each one should be killed for his own crime? Why does the verse say, fathers shall not be killed because of sons? Fathers shall not be killed on the testimony of sons, and sons shall not be killed on testimony of fathers. From here that witnesses shall not be relatives of the accused.

From where that witnesses may not be relatives of one another? Think of it, if they be found perjured, would each of them not be killed by the other’s testimony? From where that witnesses may not be relatives of the judges? Think of it, if one of them be found perjured, he could not be killed unless the other also was found perjured. If you say so, would he not be killed by the other’s sentencing?

From where that judges may not be relatives of one another? The Torah said, kill on the testimony of witnesses, kill on the sentence of judges. Since witnesses may not be relatives of one another, neither may judges be relatives of one another.

So far only fathers and sons; from where the other relatives? Rebbi Ze’ira says, and sons includes the remaining relatives.

So far according to Rebbi Aqiba.
From where following Rebbi Ismael? Rebbi Ismael stated: *The congregation shall judge between the beater, etc*<sup>20</sup>. The congregation be neither relatives of the murderer nor relatives of the murdered. Rebbi Yose said, otherwise you would say that the court is engaged in vendetta. This implies that the judges may not be related to the accused. And from where that the witnesses may not be related to the accused? The Torah said, *kill on the testimony of witnesses, kill on the sentence of those who vote*<sup>21</sup>. Since judges may not be related to the accused, neither may witnesses be related to the accused. From where that witnesses may not be relatives of one another? Think of it, if they be found perjured, would they not be killed by each other’s testimony?

<sup>20</sup> Num. 35:24; *between the slayer and the avenger of the blood.*<sup>21</sup> I. e., the judges; the expression is from Ex. 23:2.
“To qualified but not to disqualified ones.” For it is said, *if he does not tell, he has to bear his punishment*. If he told, the other would have to pay money. This excludes one where the other would not have to pay money even if he told.

“Before the court.” To exclude a single witness. If they told him that they would accept his word as if there were two witnesses, from where? The verse says, *if he was a witness, had seen or known; if he does not tell he shall bear his punishment*. One who is qualified to testify according to biblical standards; this excludes a single witness who is not qualified to testify.

“Outside of court.” *If he does not tell, he has to bear his punishment*. If he told, one would have to pay money. This excludes outside of court where the other would not have to pay money even if he told.

From where two witnesses? *And he is a witness*, this makes two. Following Rebbi Ismael, who said, any place where the Torah mentions a witness without further determination it implies two witnesses; unless the verse informs you that a single witness is meant. It was found stated in the name of Rebbi Ismael: “Two witnesses.” Can a single witness be found guilty of a blurted oath? Since it is possible to say that one person could team up with him, then he would be subject to the oath of testimony, you could find
him liable for an oath of testimony. How could you find him guilty of a blurted oath?

Should a relative be found guilty of a blurted oath? Does it follow what Rebbi Abba said in the name of Samuel: “An oath that X gave to Y,” and it turns out that X had not given; since there is nothing in the future there is nothing in the past. Or the following: “Where is my ox?” He responded, “I do not know what you are referring to.” Rebbi declares him not liable for a keeper’s oath but liable because of a blurted oath. Rebbi Johanan said, since it is a religious duty to appease him, he is not liable because of a blurted oath. In the rabbis’ opinion, is there no religious duty to appease him? One appeases with truthful statements, not with lies.

Rebbi Ismael stated: *He has to bear his punishment*, a sacrifice. From where that one needs a court? “Telling, telling”. Since *telling* mentioned there is before a court, also telling here is before a court.
Or like the following. “One accepts the witnesses’ testimony only if they saw it together. Rebbi Joshua ben Qorha says, even if they saw it one after the other.” Rebbi Jeremiah, Rebbi Samuel ben Rav Isaac in the name of Rav Isaac who said in the name of Rav: The Sages agree with Rebbi Joshua ben Qorha with regard to witnesses of firstlings and witnesses of squatters’ rights. Rebbi Abba in the name of Rebbi Jeremiah: the same holds for testimony regarding signs. In that case, it is obvious if one says, I saw two hairs on his back and one says, I saw one hair on his back and the other says, I saw one hair on his belly, that is nothing; so much more his back and his back. Two are saying, we saw one hair on his back; and one is saying, I saw one hair on his belly. Rebbi Yose ben Rebbi Bun and Rebbi Hoshiaia ben Rebbi Shammai, one said, it is invalid, but the other said, it is valid. He who says it is invalid considers him as one who testifies to half a sign. He who says it is valid? I say, maybe it was rubbed off. One says, I saw two hairs on his back; and one says, I saw two on his belly. Rebbi Abba said, everybody agrees that this is valid. Rebbi Haggai said, everybody agrees that this is invalid [testimony]. Rebbi Yose says, this is in disagreement. Rebbi Yudan said, this is in disagreement. Rebbi Yose said to Rebbi Haggai, does not Rebbi Yudan follow my opinion? He answered, I am disagreeing with his teacher, so much more with him. Rebbi Mana said, Rebbi Haggai was correct. If a document was signed by four seals, if one person (permitted) two, and another (questioned) the other two, and the document was attacked, is that worth anything? Does not every single signature need two witnesses? And here, every single sign needs two witnesses. Rebbi Hanina learns it from the years of squatting rights. If one [witness] testified that he ate from the property the first, second, and third years and another testified that he ate it the fourth and fifth years, is that worth anything? Does not every single year need two witnesses? And here, every single sign needs two witnesses.

23 This is a careless copy of a text in Sotah 1:1 Notes 56-71, Ketubot 2:4 Note 87, Sanhedrin 3:10 Note 197.
24 There is a sentence missing: “the other says, I saw two hairs on his side. If”.
25 It should read: “back and side”.
26 This clearly is corrupt. In both cases, read: “testified to”.
HALAKAH 3

Mishnah 2: They are liable both for intentional [violation of the] oath and for erroneous one\(^{27}\), and for intentional [refusal of] testimony, but one is not liable unintentionally\(^{28}\). What is one liable for if intentional? A variable value sacrifice.

Mishnah 3: What is an oath about testimony? One said to witnesses, come and testify for me. “An oath that we do not know testimony for you;” or they said to him, we do not know any testimony for you, “I am asking you to take an oath upon this;” if they said “Amen”, they are liable\(^1\). If he asked them five times outside of court to take an oath; when they came to court and admitted it they are not liable\(^{29}\). If they deny, they are liable for each single one. If he asked them five times in court to take an oath and the refused, they are liable only once. Rebbi Simeon said, what is the reason? Because they cannot come back and admit\(^{30}\).

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27 If he swore falsely that he did not know testimony but did not know that this makes him liable for a sacrifice.
28 If honestly he was erroneously thinking that he did not know testimony.
29 Since refusal of testimony outside of court is irrelevant (Note 6).
30 Since the courts operate on the principle that a witness can testify only once, i.e., he cannot change his testimony, after a first refusal in court the witness would not be permitted to change his statement. The additional oaths put on the witnesses are pointless; the court should prohibit them. In the language of the Babli, כיון ששכרו את זה مرةugged, “after he told, he does not return to tell”.

(35c line 34) תכלת ה: שבשעת קדשות כל רחיצה. כלשה על Buckley מי פא כו'
(35c line 34) תכלת ה: שבשעת קדשות כל רחיצה. כלשה על Buckley מי פא כו'
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(35c line 34) תכלת ה: שבשעת קדשות כל רחיצה. כלשה על Buckley מי פא כו'

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Halakhah 3: “What is an oath about testimony,” etc. A person, a person\[31\]. Since there it is from his own words, also here from his own words. Since here it is from others’ words, also there it is from others’ words\[32\]. Rebbi Meïr explains the equal cut which was said here: Since there it is said about his own words, so also here about his own words. Also the rabbis explain the equal cut which was said here. Since others’ words said there are in court, also others’ words said here are in court\[33\].

31 A comparison of Lev. 5:1 about oaths concerning testimony and 5:21 about the person accused of larceny who swears falsely in purgation by oath; cf. Chapter 3:12, Note 165. The parallel use of identical terms is an equal cut which allows transfer of rules from one occurrence to the other.

32 In v. 5:1 the potential witness hears the sound of an imprecation; others formulate the oath to which he is asked to assent. In 5:21 he himself formulates the oath to deny a deposit, or a loan, or robbery. The equal cut allows one to transfer one situation to the other; oaths about testimony may be formulated by the potential witness himself; oaths of a person accused of larceny may be formulated by the aggrieved party.

33 This paragraph refers to the disagreement between R. Meïr and the rabbis in Mishnah 1.

The formulation here presupposes that one knows what was explained elsewhere about interpretation of equal cuts [Yebamot 11:1 Notes 30,34 (Sanhedrin 9:1); Chapter 5:2]. R. Meïr holds that the laws to be transferred are what can be read off the corresponding verses; the rabbis transfer laws only in the context of the verses on both sides.

Verse 5:21 reads, to deny a deposit . . . and he swears to a lie; it is understood that this creates guilt whether or not it was before a court. But testimony is before a court; therefore v. 5:1 only speaks of guilt incurred in a court trial. R. Meïr holds that an oath formulated by another person following the situation of v. 1 transferred to v. 21 cannot create liability for a sacrifice outside of court, but an oath pronounced by himself (v. 21) always creates such a liability. The rabbis hold that while we accept that the equal cut shows that oaths formulated by himself are covered by v. 1, the context of that verse forces the conclusion that one refers to court proceedings only.
Rebbi Jeremiah asked: Is a relative liable for an oath about testimony formulated by himself? Can we hear it from the following: since they inferred formulation by himself for an oath about testimony only from oaths about deposits, and since there relatives are liable, so they also are here? Rebbi Yose said, can relatives here be inferred from relatives there?

34 This question makes sense only according to R. Meïr who disregards context. Relatives are barred as witnesses and judges; they are not barred as claimants. If somebody embezzled the property of a relative, that relative can go to court. Therefore, oaths about deposits can be sworn to relatives. Would R. Meïr agree that oaths about testimony, even though they cannot be enforced in court, create liabilities for sacrifices?

35 Even R. Meïr will agree that an equal cut allows one to transfer only rules that make sense in the new context. Since oaths about testimony are void among relatives, they may create liabilities for “vain” oaths but no liability for variable sacrifices.

Rebbi Yudan the Cappadocian asked: He made him swear five times by his own formulation before the court: would he not be liable for each instance separately? Rebbi Yose said, is this not the Mishnah: “Rebbi Simeon said, what is the reason? Because they cannot come back and admit?” But here, since they can come back and admit, they are liable for each single instance.

36 Since it is his own oath, it is not testimony and not under the rule that nobody can testify twice in the same case.
Rebbi Jeremiah asked: If he made him swear five times in his own words and let him swear five times by the mouth of others, what? Since Rebbi Meïr considered “in his own words” as if in court, would they determine the sacrifice on the first occasion, even without request? It should come like the following: 

“Why do you go after us? An oath that we do not know any testimony relevant for you. Should they be liable? The verse says, and he heard the voice of an imprecation. Only one who hears an imprecation. This excludes those who did not hear a voice.”

Would he be liable from his own mouth for real estate? From his own mouth would he be liable for fines? From his own mouth would he be liable for a variable value sacrifice?

37 Again this is a question following R. Meïr. It is clear that the demand that they answer to an oath formulated by the person who wants to force testimony must be made in court. Therefore, one has to assume that the first five oaths were made outside of court. Then they are not subject to the rule that there can be only one testimony. The next question is about the status of an oath of denial of knowledge before the other even had asked for their testimony.

38 Cf. Tosephta 2:11 (Babli 31b). The baraita is formulated independently from the Babylonian Tosephta.

39 Lev. 5:1.

40 The Tosephta states clearly, “they are not liable unless he requested [the testimony]”.

41 All examples in Lev. 5:21-22 (a deposit, a loan, extortion and robbery, a find) refer to monetary claims about movables. Since there can be no sacrifice for an oath about deposits relating to real estate, one might argue that there can be no sacrifice for an oath about testimony involving real estate, asserted in Tosephta 4:1.

42 These fines are biblically imposed for misdeeds. Whether there can be an oath about these is in dispute between the majority and R. Simeon, Mishnah 5:6.

43 From the equal cut (Note 32) we know that for a false oath regarding testimony formulated by the potential witness he is liable for a sacrifice. Is that the variable value sacrifice for a false oath regarding testimony or a fixed value sacrifice required for a false testimony about deposits?
Rebbi Abba, Rav Jehudah in the name of Rav: in error, a sacrifice; intentional, a sacrifice. But if he said, I was of the opinion that this oath does not exist, he is free⁴⁴. Hizqiah stated: At any place where the Torah mentions sin without attribute you include intentional equally with unintentional unless Scripture inform you that it is unintentional⁴⁵.

⁴⁴ This now refers to Mishnah 2. The only case in which one is not liable is if he was of the opinion that swearing to evade appearing as a witness was not forbidden. Then his action is without criminal intent.

⁴⁵ In all cases of purification sacrifices mentioned in Lev. 4 it is emphasized that these apply only to atone for "sins in error." In most cases of reparation sacrifices described in Chapter 5, there is no mention of error. It follows that the word כפשעה alone covers both intentional and unintentional sins.

Mishnah 4: If both of them disavowed simultaneously, both of them are liable; one after the other, the first is liable but the second is not liable⁴⁶. If one reneged but one confessed, the one who disavowed is liable⁴⁷. If there were two groups of witnesses, if the first group disavowed and after this the second, both are liable since testimony could be upheld by either one of them⁴⁸.

⁴⁶ If there are only two witnesses and one refuses to testify even though he had assented to an oath that he would testify, the second witness becomes a single witness whose testimony cannot compel the defendant in a civil suit to pay money. All the testimony of a single witness in a civil suit can do is force the defendant to swear that he does not owe money. Since the refusal of the second witness to testify does not inflict a monetary loss on the claimant, he is not liable for a sacrifice unless he disavowed simultaneously with the first.

⁴⁷ The action of the first witness deprived
the claimant also of the testimony of the second; this triggers liability.

48 Only two witnesses are needed for conviction; the two groups of witnesses are independent of one another and the order of their appearance is irrelevant.

Halakhah 4: “If both of them disavowed simultaneously,” etc. If they dedicated a sacrifice and said, we are going to disavow in court. This is what Rebbi Hiyya stated, *his sacrifice for the Eternal for his vow of nazir,* that his vow of *nazir* precede his sacrifice, not that his sacrifice precede his vow of *nazir*. If they were sworn to out of court, dedicated a sacrifice and said, we are going to renege in court, how do you treat this? As if his sin did precede his sacrifice or since the are liable only in court as if their sacrifice did precede their sin?

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49 *Num.* 6:21. An obligatory sacrifice cannot be brought voluntarily. Therefore it cannot be dedicated before the obligation exists. The dedication cannot be undone (*Lev.* 27:9). Therefore, the original sacrifice has to be rededicated as voluntary offering and a new sacrifice be given as obligatory sacrifice. *Nazir* 2:9 (Note 118), 3:2 (Note 32), Tosephta *Nazir* 2:6, *Num. rabba* 10(42).

50 The question is not answered. Possibly it is a sequel to R. Jeremiah’s questions in the preceding Halakhah; cf. *Terumot* 10:11 Note 110.

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49c line 62

כפירה שליחתמ. כפר אедь שליחתמ אедь כפירה חייב. אедь רבי יוסי. שמיתא תורה שיאים י◚י קדיו היдумал אתא. נשליח שעי

לראשו.

So is the Mishnah: “If one disavowed but one confessed, the one who disavowed is liable.” Rebbi Yose said, our Mishnah if the second changed his opinion immediately after the speaking of the first. Because if the first changed his opinion, one would accept him; then the second would become the first.
51 The question is why does the Mishnah speak of “one” and not “first” or “second”? The sentence must refer to the first clause in the Mishnah, that both disavowed together but then one of them changed his mind.

52 “Immediately” is defined either as the time needed to say “peace upon you” or “peace upon you, my master” [Berakhot 2:1 (Notes 50-52), Mo’ed qatan 3:7 (83c l. 37), Nazir 4:1 Note 12]. Anything said immediately following testimony is part of the testimony. The rule that a witness cannot change his testimony does not apply to corrections made immediately. Babli 32a.

If they were ten53. There are Tanna’im who state, the first one is liable and all the rest are not liable. There are Tanna’im who state, the last one is not liable and all the rest are liable. The one who said, the first one is liable and all the rest are not liable, holds with him who said, the testimony can be verified by the remaining [witnesses]. The one who said, the last one is not liable and all the rest are liable, holds with him who said, testimony that was partially invalidated is totally invalidated54. Rebbi Yose said, the Mishnah says so: “if there were two groups of witnesses.” He only said “two”. Therefore if there had been one55, testimony that was partially invalidated it is totally invalidated.

53 Ten witnesses asked as a group to testify.

54 Both opinions are expressed in Mishnah Makkot 1:12-13 (in most Mishnah editions, Mishnah 1:8). It is obvious that the attributions have to be switched. If in civil suits any testimony supported by 2 witnesses is acceptable then only the last, single, remaining witness is not liable (Note 46). But if the testimony of a group is only acceptable if all witnesses are qualified and testify in parallel then the first disqualification disqualifies the group and only the first witness is liable.

55 The formulation of the Mishnah is “two groups of two witnesses” and not “four witnesses”.
Mishnah 5: “I am putting an oath on you that you should come and testify for me that I have a claim against X for a deposit, and a loan, and robbery, and a lost object.” “An oath that we do not know testimony for you;” they are liable only once. “An oath that we do not know that you have a claim against X for a deposit, and a common venture, and robbery, and a lost object;” they are liable for each single one.$^{56}$

56 Since each single item mentioned oath counts as a separate oath for each would need separate testimony, the detailed. The list is taken from Lev. 5:21-22.

Halakhah 5: “I am putting an oath on you that you should come and testify for me,” etc. $^{57}$From where that this only refers to monetary claims? Rebbi Eliezer said, it uses here “or” and it uses “or” with a deposit.$^{58}$ Since the “or” used with a deposit only refers to monetary claims, also the “or” used here only refers to monetary claims. The “or” of the homicide will disprove$^{59}$ since they do not refer to monetary claims. One argues about “or” accompanied by an oath from “or” accompanied by an oath; the “or” of the homicide cannot disprove since they are not accompanied by an oath. The “or” of the deviant woman will disprove$^{60}$ since they are accompanied by an
oath and do not refer to monetary claims. One argues about “or” accompanied by an oath not accompanied by a Cohen from similar “or”; the “or” of the deviant woman cannot disprove since they are accompanied by a Cohen. The “or” of blurring lips will disprove since they do not refer to monetary claims. One argues about “or” where He made intent equal to error from similar “or”; the “or” of blurting lips cannot disprove since there He did not make intent equal to error.

Rebbi Aqiba says, for some of these one is liable, for some one is not liable. For monetary claims one is liable; for non-monetary claims one is not liable.

Rebbi Simeon says, He made liable here and he made liable for a deposit. Since deposits only refer to monetary claims, so here also it only refers to monetary claims.

57 Babli 33b, Sifra Hova (Wayyiqra 2) Parashah 8(8-10).
58 In Lev. 5:1, “or” is used twice, in vv. 21-22 four times.
59 Num. 35:22-23, in the description of accidental homicide, “or” is used twice.
60 Num. 5:14, the presumption of innocence of the deviant woman is introduced by “or”. The imprecation is not the woman’s but the Cohen’s, v. 19.
61 Lev. 5:4, “or” is used twice.
62 As explained in the preceding Chapters, blurted oaths create a liability for a sacrifice only if they were broken in a period of forgetting, i. e., unintentionally. There is no mention of unintentional sin for liability in cases of oath about testimony or monetary damages.
63 He refers to Lev. 5:5: It shall be if he causes damage by some of these; some will require a sacrifice but not others. The decision what to include is left to the religious authorities guided by the hermeneutical principle of “equal cut”.
64 Babli 33b, Sifra Hova (Wayyiqra 2) Pereq 17(1).

Mishnah 6: “I am putting an oath on you that you should come and testify for me that I have a claim against X for a deposit of wheat, and barley,
and spelt.” “An oath that we do not know testimony for you;” they are liable only once. “An oath that we do not know that you have a claim against X for a deposit of wheat, and barley, and spelt;” they are liable for each single one.⁶⁶

Since a claim to money’s worth is equal to a claim to money.

Halakham 6: “I am putting an oath on you,” etc.⁶⁶ It was stated: Rebbi Yose the Galilean says, why does the verse say, and he is a witness, or saw, or knew⁶⁷, etc.? I said this only for testimony which may be accepted about knowing without seeing, or seeing without knowing.

How is knowing without seeing in monetary claims? “Give me my 200 zuz which you are holding.” “I do not have anything of yours.” “But did you not confess before X and Y”? “They should testify and I shall pay.” This refers to knowing without seeing. They came and said, whether he confessed to him or whether he robbed him, we do not know. Whether he gave him a loan we do not know⁶⁹.
How is seeing without knowing in monetary claims? “Give me my 200 zuz which you are holding.” “I do not have anything of yours.” “But did I not count them for you in a meeting with X and Y”? “They should testify and I shall pay.” This refers to seeing without knowing. They came and said, whether he counted for him or whether he robbed him, we do not know. Whether he took a loan from him, we do not know.

“Give me the fine for my daughter which you owe me.” But he says, “I never in my life was found liable for a fine.” Witnesses testify that he was found liable for a fine, but we do not know whether the fine was for his daughter or the fine for another woman.

“You raped or you seduced my daughter.” But he says, “I never in my life did rape or seduce a woman.” Witnesses testify that he raped a woman, but we do not know whether it was his daughter or another woman.

“You killed my ox and cut down my orchard.” But he says, “I do not know.” He is liable. “You told me to kill and cut down,” one follows the majority of orchards. What means, one follows the majority of orchards? Rebbi Haggai said, if his ox was goring, he would have told him; if the orchard was barren, he would have told him. Rebbi Yudan said, in matters of monetary claims, since he may tell him, you told me to kill and cut down, even if he told him “I did not kill, I did not cut down,” he is not liable.

66 Rabbi 33b, Sifra Hova (Wayyiqa 2) Pereq 17(1).
67 Lev. 5:1.
68 Rabbi 33b, Tosephta 2:5.
69 The witnesses came and testified that they saw a transaction but they have no knowledge about the kind of transaction it was. Had the debtor not said that he would pay if the witnesses came, that testimony would be worthless, but now he has to pay. The Babli assumes that the testimony is without a disclaimer.
70 The biblical fines for seducing a virgin (Ex. 22:16) or raping her (Deut. 22:29).
71 Since he is found in court to be a liar he is barred from swearing to clear himself from the claim. Therefore even a weak testimony will buttress the claim against him.
72 In the Babli, e.g., Ketubot 12b, קר及びילאי apr הירכויי, “between certain and perhaps, certain is preferred.” If a claim is asserted as certain but the defense is that possibly it is false, there is no defense.
73 Rabbi Bava gamma 91b.
74 Since the burden of proof is on the claimant.
Mishnah 7: “I am putting an oath on you that you should come and testify for me that X owes me full damages or half damages, double restitution or quadruple and quintuple restitution, that X raped or seduced my daughter, or that my son hit me, or that my neighbor injured me, or that he set fire to my grain stack on the Day of Atonement;” these are liable.

Mishnah 8: “I am putting an oath on you that you should come and testify for me that I am a Cohen, that I am a Levite, that I am not the son of a divorcer, that I am not the son of a woman having received halîsah, that X raped or seduced his daughter, or that my son injured me, or that my neighbor injured me or set fire to my grain stack on the Sabbath;” these are not liable.

75 For damage caused by another’s animals to the claimant’s animals, Ex. 21:35-36.
76 The punishment of the thief, Ex. 22:3; 21:37.
77 If the son hit his parents without causing a wound, they can sue him for damages; it is a monetary claim. But if he injured them it is a capital crime (Ex. 21:15).
78 He has to pay, Ex. 21:18; Mishnah Bava qamma 8:1.
79 Even though it is a deadly sin punishable by extirpation, the desecration is not a case for the earthly court and has no influence on a possible damage suit. Cf. Gittin 5:4 Notes 138-139.
80 Even though the claimant may bring the suit in order to be recognized as a Cohen because he wants to receive a priest’s prebends, the suit is classified as one for status, not for money.
81 The same holds for a Levite who may receive tithe.
82 The last two cases are suits to be declared a qualified priest, not directly for monetary claims.
83 Capital crimes; the deflowered daughter cannot sue for damages since a possible death sentence precludes damage suits (Terumot 7:1, Notes 19-70).
84 A capital crime.
85 All these suits are not for monetary claims; even though there may be a duty for witnesses to testify, no sacrifice is due for a
refusal to obey a summons under oath in a case which never can result in monetary claims.

Halakhah 7: “I am putting an oath on you,” etc. Halakhah 8: “I am putting an oath on you,” etc. *A person who would sin, a person who would sin as an equal cut*. Since *a person who would sin* which was said further on refers to an active monetary claim, also *a person who would sin* must refer to an active monetary claim.


87 There is liability for a sacrifice only if the requested testimony was for the claimant in a suit under the law of obligations. This excludes testimony for the defendant or for the claimant in a suit for breach of promise.

88 The Babylonian half-sheqel, identified with the Roman denar. Mishnah sources on has to read “claim of.”

89 This is a scribal error. With all other

Mishnah 9: “I am putting an oath on you that you should come and testify for me that Mr. X promised to give me 200 zuz but did not give them to me.” These are not liable since one is liable only for an (oath about) money similar to a deposit.
flogging. He explains it following Rebbi Meïr who said, he is flogged and he pays.

In any case he did not make him lose money. Is it not that since he wanted to give him but did not give to him; it is as if he made him lose money.

It seems that this paragraph refers to Mishnah 7 (and in the Leiden ms. Halakhah 9 precedes Halakhot 7 and 8) declaring that a claim about damage on the Day of Atonement is a monetary claim which according to Terumot 7:1 Note 51 is true only for R. Johanan but not for R. Simeon ben Laqish. The latter holds that since a violation of the Day of Atonement in front of witnesses after due warning will expose the perpetrator to flogging, there can be no monetary claim even if there are no witnesses and the case of desecration is not one for the courts.

The same explanation is given in Terumot 7:1 Note 7. Cf. Babli Ketubot 33b.

This now refers to Mishnah 9. The formulation of the Mishnah is necessary since a breach of promise could be considered inflicting monetary loss. It is necessary to state that this loss does not qualify under the rules of equal cut.

Mishnah 10: “I am putting an oath on you, that you shall come and testify for me when you know testimony for me.” These are not liable since the oath preceded the testimony.

Mishnah 11: If he stood in the synagogue and said, “I am putting an oath on you, that you shall come and testify for me if you know testimony for me.” These are not liable.

If they disobey the imprecation. Lev. 5:1 is quite explicit that it applies only to persons who already know the testimony.

This sentence is elliptic. The oath preceded the possibility of testimony.

Since the imprecation is not directed at any specific persons.
Halakhah 10: “I am putting an oath on you,” etc. Rebbi Yose, Rebbi Jacob bar Zavdi, Rebbi Abbahu in the name of Rebbi Johanan: If somebody wanted to change his mind after he had promised a gift to another person, he may change his mind. Rebbi Jacob bar Zavdi asked before Rebbi Abbahu: Did He not say “a true yes”97? At the moment when he said it, it was a true yes.

96 Ševi`it 10:9 Notes 133-134; Gittin 6:1 Note 39, Bava mesi’a 4:2 Note 49; Babli Bava mesi’a 49a, Bekhorot 13b; Sifra Qedošim Pereq 8(7).

97 Lev. 19:36. The pun identifies the measure of the Hebrew י with the Aramaic equivalent ו.

98 This refers to Mishnah 11, that a wholesale imprecation is invalid.

99 Is it because the person demanding testimony does not know the identity of the person whom he is asking to testify or does he not know whom to ask to testify because he does not know who would be able to testify.

100 In the Sephardic tradition of the Mishnah, independent and in the Babli, including Maimonides’s autograph, this statement is part of the Mishnah. In the Ashkenazic tradition of the Babli, as exemplified by the Munich ms., the Mishnah is identical with the version given in the Yerushalmi. In Sifra Hova (Wayyiqra 2) Parashah 8(6) the language is that of the Sephardic Mishnah, based on the expression and he is a witness of Lev. 5:1. The Babli (35a) infers from this verse that the demand for testimony must be personal; it is not enough that the claimant know the identity of the witness, the request must be delivered individually. If the claimant sees a group of...
people which includes the two whom he wants as his witnesses, he may not address the group collectively; he must summon them personally.

Mishnah 12: If he said to two persons, I am putting an oath on you, X and Y, that you shall come and testify for me if you know testimony for me, but they knew from another witness\(^{101}\), or one of them was a relative or disqualified. These are not liable.

101 This is hearsay evidence inadmissible in court. If one of a group of witnesses is disqualified, the other one at most could force the defendant to swear; he never could force him to pay money. Therefore the oath is invalid also for the party which would be qualified.

Halakhah 12: “If he said to two persons, I am putting an oath on you,” etc. Rebbi Mana understood it from the following, “or one of them was a relative or disqualified.” Therefore, unless one of them was a relative or disqualified, they are liable. And he knows who they are. Therefore the reason can only be that he does not intend them.

Rebbi Yose understood it from the preceding, “since the oath preceded the testimony.” Therefore, if the oath did not precede the testimony, they are liable. And he knows who they are. Therefore the reason can only be that he does not intend them\(^{102}\).

102 This again refers to Mishnah 11, it is a continuation of the preceding Halakhah. All the Mishnaiot quoted presuppose that the claimant knows exactly whom he wants as
witness; nevertheless his imprecation is ineffective. Therefore it may be assumed that also in the case of Mishnah 11 it would be ineffective even if he knew exactly whom he intended.

Mishnah 13: If he sent through his slave or the defendant said to them, “I am putting an oath on you that you shall come and testify for him,” they are not liable unless they hear from the mouth of the claimant.

103 To ask the witnesses to testify. Even though the slave is his personal property and acts as his messenger he is disqualified since he is not the claimant and has no persona in law.

104 To create liability, the oath must be delivered directly by the claimant asking for the testimony. Cf. Note 87. Sifra Hova (Wayyiqra 2) Parashah 8(4).

Halakhah 13: “If he sent through his slave,” etc. Rebbi Eleazar said, why does the verse say, if he does not tell, he has to carry his iniquity? Not from the mouth of the claimant. Our Mishnah needs what Rebbi Eleazar said, and what Rebbi Eleazar said needs our Mishnah. If we had stated but Rebbi Eleazar had not stated, we would have said that they are liable if they had heard from the claimant but had sworn to the defendant. Therefore what Rebbi Eleazar said is necessary. If Rebbi Eleazar had stated but we had not stated, we would have instructed that they are liable if they heard it from the defendant but had sworn to the claimant. Therefore one needs our Mishnah and needs what Rebbi Eleazar said, only if they heard from the claimant and swore to the claimant.
105 This is a misquote which makes the text unintelligible. The masoretic text of Lev. 5:8*1 writes the negation as נָא which is read both as נָא and as אָה. In the first version, נָא אָה, the liability may only be triggered if he told him, if the claimant personally challenged the witness and if the witness personally accepted the challenge (Babli 35a). In the second version, אָה נָא, the liability is triggered if he does not testify.

Mishnah 14: “I put an oath upon you, I command you, I bind you,” these are liable. “By Heaven and Earth,” they are not liable. “By the Almighty, by Sabaoth, by the Gracious and Merciful, by the Forbearing and Most Benevolent,” and all substitute names, they are liable. One who curses by any of these is liable, the words of Rebbi Meïr; but the Sages declare him not liable. One who curses his father or mother by any of these is liable, the words of Rebbi Meïr; but the Sages declare him not liable.

One who curses himself or another person by any of these violates a prohibition. “May God punish you, so may God punish you,” this is the imprecation mentioned in the Torah. “May He not punish you, may He bless you, may He do well with you,” Rebbi Meïr declares liable but Rebbi Jehudah declares not liable.

106 These are valid versions of a summons to testify.
107 "Heaven" is not a sobriquet of God’s Name.
108 נָא stands for Adonay, אָה for YHWH. A substitute name is any translation of any Name of Attribute of God in any vernacular.
109 The crime of blasphemy (Lev. 24:15) refers only to blaspheming the Name (Sanhedrin 7:14).
110 The same holds for cursing father and mother (Ex. 21:17).
111 Lev. 19:14; Sifra Qedošim Parashah 2(13).
112 If the claimant says “may He not punish you if you come to testify”, or “may He bless you if you come to testify”, for R. Meïr this implies the opposite, i. e., “may He punish you if you do not come to testify” etc.

113 For R. Jehudah, what has been said explicitly is the only thing that counts.

The Mishnah versions in the Babli and in the independent Mishnah mss. all read “but the Sages declare not liable.” It is clear from the Halakhah that this also was the reading in the Yerushalmi underlying the Halakhah since it was necessary to state that the Mishnah represents R. Jehudah’s opinion.

114 Obviously he has to add what he actually demands from them but he does not have to invoke the Name, neither does he have to state that this is an oath; the verb alone is sufficient.

—Rebbi Johanan in the name of Rebbi Yannai, as our Mishnah

115 This seems to be a scribal error; one should read as in the next sentence “so is our Mishnah.”

116 Mishnah Sanhedrin 7:14. Only here is opinion of the Sages attributed to R. Jehudah; in the Babli (Sanhedrin 66a) it is attributed to R. Menahem ben R. Yose.
“One who curses himself or another person by any of these violates a prohibition.” What about flogging? The colleagues say, he cannot be flogged. Rebbi Yose said to them, why? Because it is a prohibition not involving an action. But is not one who substitutes and one who swears falsely also a prohibition which involves no action?  

117 Cf. Chapter 3:11, Notes 166-168, and the parallels indicated there. It seems that R. Yose considers any speech as an action, against the consensus that speech can be considered action only if recognized as such by a verse.

Rebbi Yasa in the name of Rebbi Johanan: Rebbi Meïr is the one who says that out of a negative one understands a positive. “May He not punish you if you come and testify for me.” Therefore, if you do not come and testify for me He shall punish you. There is not only an imprecation accompanied by an oath. From where one not accompanied by an oath be like one which is accompanied by an oath? The verse says, and heard an imprecation, and heard a voice, to make one without imprecation like one with an imprecation. Therefore not an imprecation without an oath. Rebbi Yasa in the name of Rebbi Johanan: There is no difference; an imprecation without oath is the same as an oath without an imprecation.

118 This is the position of the Yerushalmi here and in 7:1 (Note 11), Eruvin 3 (21b l. 24), Qiddushin 3:4 Note 136, Nedarim 1:4 Note 158. (The explanation given there that the statement of R. Yasa in the name of R. Johanan is a rhetorical question is incorrect;
the statement is a straightforward declarative sentence.) The Babli (36a, *Nedarim* 11a,13b, *Sotah* 17a) is totally opposed; it proposes to switch the attributions in the Mishnah between R. Meïr and the Sages.

119 *Lev.* 5:1.

120 Babli 36a, *Sifra Hova* (*Wayyiqa*ra 2) *Parashah* 8(2).
Mishnah 1: An oath about a deposit applies to men and women, unrelated persons and relatives, qualified and disqualified persons, before a court or out of court, from his own mouth. From the mouth of another he is liable only if he denies in court, the words of Rebbi Meïr. But the Sages say, whether by his own mouth or the mouth of others, from the moment that he denies, he is liable. He is liable for intent about the oath, or error about it with intent about the deposit, but he is not liable for error about the latter. What is he liable for in case of intentional violation? A reparation offering in the value of two Šeqalim.

1 In this respect the oath about money matters is equal to the rules of a blurted oath (Mishnah 3:11-12), not to the oath of testimony. All restrictions about women, relatives, and disqualified persons, refer only to witnesses and judges, not to parties in adversary proceedings.

2 The sacrifice prescribed in Lev. 5:25 (in addition to restitution of 125% of the amount embezzled) is due if the false oath was intentional, or if the oath was in error but the embezzling was intentional; it is not due if the oath was factually false because the maker of the oath did not realize that he had the deposit, or forgot about it. The Babli (but not Maimonides) reads the last word as referring to the oath; he is not liable if he was ignorant of the fact that false oaths are forbidden and that they trigger liability for a sacrifice.

3 Lev. 5:25 prescribes a reparation offering “in its value”; the value defined in 5:15 as “Šeqalim”. An indeterminate plural always means 2 (Chapter 4, Note 8). The biblical Šeqel is the traditional “King’s weight” of about 12g silver, about equal to the tetradrachma of the early Principate, and double the rabbinic Šeqel of two zuz (cf. Qiddušin 1:1, Note 122.) Sifra Hova (Wayyigra 2) Parashah 13(14).
Halakah 1: “An oath about a deposit,” etc. It was stated: Is an oath in his own formulation of an oath of testimony like an imprecation; in his own words is an oath about a deposit like an imprecation? Rebbi Yose said, since it is written “a person, a person,” everything is here and everything is there. Rebbi Mana said, an imprecation made in court is the topic of disagreement between Rebbi Meir and the Sages.

He lied to his fellow man, if his confession was eliminated by the oath.

It excludes one who lied to one of partners; it excludes one who lied where there are witnesses and a document. Rebbi Yose said, this implies that if two people took a loan from one person, even if they did not write “we are responsible and warrantors for one another”, they are responsible and warrantors for one another; but one does not act on this. If two made a joint deposit and one came to retrieve his property, one does not listen to him.

Should he not be treated as denying his part and be liable? If one made a deposit with two people. If one denied it, he is liable. If the other denied it, he is liable. If the deposit was worth one peruta, does this not result in each of them bringing a sacrifice for half a peruta? What here? If one would swear, and swear, and swear, would he not bring a sacrifice for half a peruta? There, each oath refers to a peruta’s worth. Here no oath refers to a peruta’s worth.

For this and part of the next Halakah there exists a rudimentary Genizah fragment edited by L. Ginzberg, Yerushalmi Fragments, New York 1909, pp. 285-286 (G).

It was established in 4:14 (Note 119)
that for requests of testimony imprecations without oaths and oaths without imprecations trigger liabilities for a sacrifice. As noted before, the natural setting of an oath or imprecation for testimony is one formulated by the claimant; for oaths about deposits it is one formulated by the defendant. No imprecations are mentioned in connection with oaths about deposits. The unresolved questions are whether an imprecation formulated by the potential witness triggers liability and what the status is of an imprecation substituting for an oath is a case of disputed monetary claim?

6 Lev. 5:1; cf. Chapter 4:3 Note 31.
7 Not only oaths; Mishnah 4:1.
8 The following is also quoted by Alfassi (Shevuot Chapter 5) and is the subject of extensive commentaries by Nachmanides, R. Nissim Gerondi, and Rosh. Cf. Babli 36a.
9 Lev. 5:21.
10 Liability for a sacrifice is created only if the false oath saves the defendant from a sentence which would obliged him to pay the claimant. Cf. S. Liebermann, Review of S. Asaph, Meserit ha-Ometim, Tarbiz 5 (1934) pp. 395-400.
11 Swearing falsely to only one of the partners has no monetary consequences as long as the defendant did not also lie to the other partners. Swearing falsely about an obligation which can be proven by witnesses or documents is pointless.

12 The implication that rules governing one debtor and two creditors can be applied to one creditor and two debtors is not found in the Babli but accepted by Rif (§1043) and all subsequent codifiers; the note that one does not act on this, but writes joint liabilities in all contracts, was not accepted by Rif and his successor Josef ibn Migash (cf. I. Tashma and H. Ben Shammi, Kobez al Yad 8 (18) Jerusalem 1975 p. 179 Note 10).

13 Without explicit authorization by one of the depositors to the trustee, a joint deposit may be returned only to the joint depositors.

14 If both trustees denied the existence of the deposit at different times, both are liable.

15 A peruta (a Hasmonean coin of about 2g bronze) is the smallest amount for which one may go to court. (Half-peruta coins have been found.) Since a half-peruta cannot be the subject of a law suit, it cannot be the cause of liability for any kind of oath. Should not the sacrifice for an oath about a half-peruta be forbidden as false dedication?

16 Since he has to bring three sacrifices for oaths about one peruta, each one is for a third of a peruta.

17 The previous argument is wrong. Multiple infractions all concerning the same peruta need separate atoning. A deposit given to two people jointly must be at least two perutas worth to trigger liabilities for sacrifices.

רבי לא וברוי תקן וריש לקיש תריהוהו אכמייר._LT כה עדיס. קמי ישאם חודיו
בשבעת. כלמה. קמיש שיםפיטי כלמה. ושכר אמי מאי עבד. כל לי טעמיא אלא משומש
שאםפיטי לופש עוזרה. נמי טנין. אמי חור. אמי. ל. אבד. מושיבת ראש אמי. אמי. אמי.
Rebbi La: Both Rebbi Johanan and Rebbi Simeon ben Laqish both are saying, there is no "witnesses" here. Why? Because they might die. But might not a document be lost? Therefore, the reason can only be that they might forget their testimony. There, we have stated: "Where is my ox? He told him, it is lost. I want you to swear, he said, Amen. But witnesses testify that he ate it. He has to pay the value. If he confessed himself, he has to pay the value, and the fifth, and the reparation sacrifice." The Mishnah [applies] if he does not know that there are witnesses. He comes to tell you, even if he knows that there are witnesses. Rebbi Yose said, the Mishnah says so: "If there were two groups of witnesses, if the first group reneged and after this the second, both are liable." One understands that the first group becomes liable. Why the second? Not because they might forget their testimony. [Here also, because they (are commanded) to forget their testimony.]

18 Probably one should read instead of "both". G is of no help. The Babli (37b) only quotes R. Johanan.

19 While they agree that an oath denying any documentary obligation is futile, they hold that a debt proven only by the oral testimony of witnesses is difficult to enforce and, therefore, the debtor may see a chance to evade monetary obligations by a false oath. In the baraita quoted at the start of the preceding paragraph the mention of "witnesses" should be deleted.

20 There are several reasons why testimony by witnesses alone may be impossible; this might encourage false oaths.

21 Mishnah 8:4.

22 The second person has accepted to watch over the ox without being paid and without having the right to use the ox for work. If anything happens to the ox except cases of gross negligence, the trustee does not have to pay. The moment he uses the ox for his own purposes, he becomes liable for damages. Since he swears falsely that it was lost, he swears falsely for monetary gain and becomes liable. (Had he claimed that the ox was stolen, he would have had to pay the thief's fine in addition to paying for the ox.) If he confesses in order to clear his
conscience, he becomes eligible for atonement of his sin which is effected by paying an additional fifth (from above, i.e., a quarter from below) and a sacrifice in the value of 2 šeqalim.

23 The formulation of the Mishnah shows clearly that there were witnesses available when he swore falsely. Nevertheless, he has to bring a sacrifice if he confesses. Why do R. Johanan and R. Simeon ben Laqish have to formulate a statement which clearly is implied by a Mishnah? The answer is that the Mishnah may be interpreted that the trustee swore falsely in the belief that there were no witnesses; he swore for monetary gain. The Amoraic statement adds that even had the trustee known of the existence of witnesses, only they were not present at the moment of his oath, it still is an oath for monetary gain since the witnesses might forget their testimony in the meantime. The formulation “he”, not “they”, in the last sentence may support the reading of the Babli which only mentions R. Johanan.

24 Mishnah 4:4.

25 This text is very difficult and all commentators and editors follow the Babli (32b/33a) and switch the places of “first” and “second”, for the reasons explained in Halakhah 4:4, Note 54. But this seems to be excluded by the text of G, which becomes the more credible as its scribe clearly did not understand the text since he misread מְשִׁיךְ as מְשִׁיךְ “being apt to” as מְשִׁיךְ “being commanded”.

Therefore one is forced to explain that the first group clearly violates their oath of testimony by reneging on it. The question is why the second group is not freed from their obligation by the first since strictly speaking only two witnesses are needed by biblical standards; any additional witnesses appear superfluous. The answer is that additional witnesses never are superfluous since any witness may forget, if not the whole incident so some detail which might invalidate his testimony in cross examination. One knows that the testimony of a group of witnesses is valid only after it was accepted in court.

26 Added from G; cf. the preceding Note.

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He denied it\(^\text{27}\), not him\(^\text{28}\). "Ben Azzai says, there are three kinds of lost properties. One who knows about it and its finder; about it but not about its finder; neither about it nor about its finder.” Rebbi Onias in the name of Rebbi Jeremiah: All of them to relieve from liability\(^\text{30}\). Rebbi Jacob bar Aha in the name of Rebbi Yose: This is not so\(^\text{31}\). Rebbi Yose asked, why should it...
be to relieve from liability? Rebbi Mana said, the three kinds of lost property
cannot be “one who knows about it and its finder; about it but not about its
finder; neither about it nor about its finder.” About it and its finder, that is
where we hold. But it must be about one who denies [knowledge] about it
and its finder; about its finder but not about it; about it but not about its
finder. So is the baraita: “About it and its finder.”

27 Lev. 5:22.
28 In Sifra Hova (Wayyiqa 2) Pereq 22(6) more in detail: “About it but not
about its finder.” This Tanna and both Talmudim reject the understanding of the
verse as given in the Targumim, that the person swearing had found the lost property
and now denies it. This would be covered by “robbery” listed in v. 21. Rather it is that
the person searching for his lost property, such as his donkey mares, asks a person
whether he knows either of the property or of the person who might have taken it. If he
under oath falsely denies any knowledge, according to this Tanna be becomes liable
for a sacrifice only if he wrongly denies knowledge about the property, not about the
person who might have appropriated it.

The big question then becomes, why
should the person asked for testimony be liable for anything since by necessity he is a
single person and the testimony of a single person cannot force a judgment. As Ravad
explains in his Commentary to Sifra, this argument would be unconditionally valid
only for oaths about testimony, not for oaths about causing monetary loss. His scenario
is, e.g., that the lost animal was standing on another person’s property. The original
owner took it but now the person from

whom it was taken claims ownership and
wants it back. The second person agrees
that he found the animal but he disputes the
fact that it is the animal which had belonged
to the first. In this situation, testimony of
one witness about ownership of the animal
is sufficient for a judgment in favor of the
first person since it is not a judgment to
transfer property but to confirm an existing
status. On the other hand, testimony that the
second person took possession of some lost
property but which failed to identify the
property is worthless and its denial cannot
trigger any liability by the potential witness.
29 Sifra Hova (Wayyiqa 2) Pereq 22(6), Babli Bava gamma 105b. In the Babli:
“Three kinds of oaths [about lost property.]”
30 In the Babli, this is attributed to the
early Galilean Amora R. Hanina.
31 In the Babli, this is the authoritative
opinion of Samuel.
32 As the Babli points out, if somebody
swears although he does not not know about
the whole affair he swears truthfully and no
liability of any kind can arise. In place of
“neither about it nor about its finder” one
must read “about it and its finder.”
33 Only the middle clause is in dispute
between Ben Azzai and the first Tanna.
Mishnah 2: What is an oath about a deposit? He said to him, “give me the deposit which you hold for me.” “An oath that I am holding nothing of yours;”34 or that he said to him, “I am holding nothing of yours;” “I am putting an oath upon you” and he said “Amen”35; this one is liable. If he made him swear five times whether in court or out of court and he denied, he is liable for each single one. Rebbi Simeon said, what is the reason? Because he may return and admit36.

34 This is the oath from his own mouth. return to tell” (Halakhah 4:3, Note 30)
35 This is the oath from another’s mouth. restricts witnesses but not parties to a trial.
36 The rule that “after he told, he does not return to tell” (Halakhah 4:3, Note 30)

Halakhah 2: “What is an oath about a deposit,” etc. 37A person, a person. Since here it is from his own words, also there from his own words. Since there it is from others’ words, also here it is from others’ words. Rebbi Meïr explains the equal cut at the place it comes from: Since here it is said about his own words, so also here38 about his own words. Also the rabbis explain the equal cut which was said about it. Since others’ words said there are in court, also others’ words said here are in court.

37 This Halakah is a reworking of Halakhah 4:3 with in most cases correctly switching “here” (5:21) and “there” (5:1) and “oath of testimony” and “oath of deposit”. The explanation of equal cut is taken from Yebamot 11:1 (Notes 30,34) as indicated in the Notes to 4:3. The text of G ends at the start of this Halakhah.
38 Obviously this should read “there.”
Rebbi Jeremiah asked: Is a relative not liable for an oath about deposits formulated by others? Can we hear it from the following: since they inferred formulation by others for an oath about deposits only from oaths about testimony, and since there relatives are not liable, so they neither are here? Rebbi Yose said, relatives here can be inferred from non-relatives there.

This paragraph is a new question, with the arguments about oaths of testimony and deposits switched. In structure and argument it is completely parallel to 4:3, Notes 34,35.

Rebbi Yudan the Cappadociot asked: He made him swear five times by the formulation of others out of the court: would he not be liable only once?

Rebbi Yose said, is this not the Mishnah: “Rebbi Simeon said, what is the reason? Because they can come back and admit?” But here, since they cannot come back and admit, they are liable only once.

If this refers to oaths about deposits, this would be the Mishnah and there would be no room for any question. It seems therefore that the question is asked about oaths of testimony and the hypothesis is that there should be liability for each one of the oaths.

Rebbi Jeremiah asked: Is a relative not liable for an oath about deposits formulated by others? Can we hear it from the following: since they inferred formulation by others for an oath about deposits only from oaths about testimony, and since there relatives are not liable, so they neither are here? Rebbi Yose said, relatives here can be inferred from non-relatives there.

This paragraph is a new question, with the arguments about oaths of testimony and deposits switched. In structure and argument it is completely parallel to 4:3, Notes 34,35.
Rebbi Jeremiah asked: If he made him swear five times, since Rebbi Meïr considered “by his own words” as in court, would this determine the sacrifice on the first occasion, even without request? It should come like the following: “Why do you go after us? An oath that we do not know any testimony relevant for you. He pays the value plus a fifth and brings a reparation sacrifice for two tetradrachmas, in distinction from an oath about testimony.”

Would he be “not liable” from others’ mouth for real estate? From others’ mouth would he be liable for a reparation sacrifice worth two šeqalim?

41 This is a bad adaptation of the text in 4:3. Following R. Meïr, since assent to an oath formulated by others is inferred from oaths about testimony, if applied to money matters does this need a claim by the other party? There can be no question about “by his own words” since that is what Lev. 5:20 ff. is all about. It is difficult to imagine a situation in which others would formulate an oath if they have no claim.

42 This is a mangled quote from a text similar to the end of Tosephta 4:1: “He said to him, give me the deposit which you hold for me. Why do you go after me? An oath that I am holding nothing of yours. This one that I am holding nothing of yours. This one is liable and has to pay for the value of the object, an added fifth, and bring a reparation sacrifice for two tetradrachmas, in distinction from an oath about testimony.”

A clear sign of the corruption is the use of the plural in the words of the claimant which makes no sense in a question about deposits.

43 For Babylonian sources (Babli 37b, Tosephta 4:1) it is obvious that the oath applies to claims for real estate which have to be proven by documents.

Mishnah 3: If five people were claiming from him and said to him, give us the deposit which you are holding for us. “An oath that I am not holding anything of yours””; he is liable only once. “An oath that I am not holding anything of you, and of you, and of you;” he is liable for each one separately.
Rebbi Eliezer says, on condition that he repeat “an oath” at the end. Rebbi Simeon says, not unless he repeat “an oath” for each single one.

44 In the Halakhah and in all parallel sources the name is not “R. Eliezer” but “R. Eleazar”. The latter name is correct as contemporary of R. Simeon; cf. R. Rabbinovicz, Diqduqe Soferim Ševuot, p. 78, Note f.

The majority [following R. Meïr in Sifra Hova (Wayyiqra 2) Pereq 17(1)] holds that an oath addressed to a group of people is a single oath, but one addressed to separate individuals counts as multiple oaths according to the number of persons mentioned in the oath. R. Eleazar holds that this is true only if the person swearing indicates that he intends the one sentence to be considered a separate oath for each individual addressed, by repeating at the end that “this is an oath.” Without such a final statement the mention of “oath” refers only to the first subject addressed in the oath. R. Simeon holds that a statement formulated as one oath is one oath; there is liability for multiple sacrifices only if it was clearly said that separate oaths were made for each claimant.

Halakhah 3: “If five people were claiming from him,” etc. I could think that also for an oath about a deposit He did not make one assenting to an oath like making an oath? Rebbi Eleazar said, this is not so. But also for an oath about a deposit we are treating one assenting to an oath like one formulating an oath.

45 The text as it stands is unintelligible. The first “also” contradicts what was stated in Halakhah 4:5 that the rules of oaths about testimony and deposits are derived from one another. An oath about testimony by its nature is imposed by another party; there it was established that the reluctant witness also is liable if he himself formulates the oath that he will appear as a witness and then reneges. Therefore, this “also” has to be deleted.

The oath about a deposit by its nature is offered by the person denying that he is holding anything. The Babli (34b) and Sifra Hova (Wayyiqra 2) Pereq 11(3) state that in this case an oath imposed by another person does not trigger the liability for a sacrifice. The Yerushalmi considers this possibility and rejects it.
Rebbi Johanan said: The words of Rebbi Eleazar, only if he mentioned “oath” at the start and at the end. The words of the Sages, if he mentioned “oath” at the start but not at the end. Or if he mentioned it at the end but not at the start in the opinion of the rabbis he brings a sacrifice for each single one, in Rebbi Eleazar’s opinion he brings one sacrifice for everything. If he mentions “oath” at the start but did not mention it at the end, does the oath fall on the middle ones? Come and see: If he had mentioned it at the start and the end, did he mention it for the middle ones? But you are saying that it is valid; so here it is valid.

46 Then multiple sacrifices are due for multiple lies.
47 In both cases, a single mention of “oath” at the end is equivalent in force to a single mention of “oath” at the start.
48 This is a question only for R. Eleazar. Does R. Eleazar only require one sacrifice because he considers everything together as one statement, or does he restrict the oath to the denial of the claim of the first person mentioned? If the denial of the claim of the first person was correct, but some denials to other persons were false, in the first case the trustee would have to bring a sacrifice but not in the second.
49 Since the difference between R. Eleazar and R. Simeon is that the latter requires a separate mention of “oath” for each single denial while R. Eleazar requires only two irrespective of the number of denials in between, it is obvious that the first eventuality mentioned in the preceding Note is the correct interpretation.
Rebbi Yudan from Cappadocia asked: What about “an oath that neither wheat, nor barley, nor spelt I am holding for you”?

Is it as if he had mentioned “oath” at beginning and end? Since the oath would be confirmed by any one of them, he is liable only once.

“I am not holding for you wheat, or barley, or spelt, an oath,” is this as if he had mentioned “oath” at beginning and end? Since the oath would be confirmed by any one of them, he is liable only once.

Is it so if this were a blurted oath? “An oath that I shall not eat; I shall not eat, an oath”? In the rabbis’ opinion he brings a sacrifice for each one. In Rebbi Eleazar’s opinion does he bring one for the entirety? Even Rebbi Eleazar will agree that he is only emphasizing the prohibitions. It only would be problematic if it were about the past. “An oath that I did not eat; I did not eat, an oath.” In the rabbis’ opinion he brings two sacrifices (for each one). In Rebbi Eleazar’s opinion he brings one (for each).

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50 The wording is that of Mishnah 5. However, there one has to translate “wheat, or barley, or spelt” and the oath is true only if he holds neither kind. But here the oath is true if he does not hold at least one of them. This follows from de Morgan’s formulas (using v “or”, & “and”, ¬ “not”):

\[
\neg (A\lor B\lor C) = \neg A \land \neg B \land \neg C,
\]

\[
\neg (A\land B\land C) = \neg A \lor \neg B \lor \neg C.
\]

51 This is a question following R. Eleazar, assuming that he disagrees not only in the case of Mishnah 3 but in all similar cases.

52 It is impossible to read this as three distinct oaths; there can be no disagreement between the rabbis and R. Eleazar in this case.

53 This is a question for the rabbis. Does placing the mention of “oath” at the end of a sentence intended as oath constitute a second oath?

54 Since this clearly represents two distinct oaths.

55 Cf. Halakhah 3:11, Note 161. Since there is only one subject, R. Eleazar should consider the two clauses as parts of one statement and require only one sacrifice. But he will agree that the second statement is meant to reinforce the first; therefore if he breaks one he breaks both and must bring two sacrifices.

56 For the rabbis, the two clauses are two separate oaths; for R. Eleazar they are two parts of one oath. Since the oaths have only one object, the references to “each one” or “all of them” are copyists’ errors induced by the use of these expressions in the other cases.
Rebbi Abbahu, Rebbi Jeremiah asked: If one said, “an oath wheat and wheat I am not holding;” what? Let us hear from the following: “Not from place X, not from place Y,” he is liable. Rebbi Yose said, they considered a multiplicity of places like a multiplicity of kinds. If he had said, not from this place, not from this place; it would have been useful.

Rebbi Haggai asked: “10 oaths that I am not holding;” what?

Rebbi Yose asked: “An oath, an oath that I am not holding for you,” what? Rebbi Yose said, let us hear from the following: “‘An oath that I shall not eat this loaf; an oath that I shall not eat it’. Then he ate it. He is liable only once. Because he mentioned “this”. Therefore, had he not mentioned “this” we would be liable for each one. Is it the same for a blurted oath? “An oath that I shall eat carcass meat, and wheat bread, and barley bread, and spelt bread.” Since he is not liable for carcass meat he is not liable for the remainder.

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57 This name tradition is impossible. Either one has to read R. Jeremiah, R. Abbahu, or, since the question fits R. Jeremiah’s style, instead of R. Abbahu one has to read R. Abba (or the name of another last generation Amora.)

58 If the same object is mentioned twice in an oath. There is no proof from a baraita that a false oath “I am not holding grain from place X nor from place Y” is considered only one oath. To be applicable to the question the same place name would have to be repeated.

59 Mishnah 3:8 (3:7 in most independent Mishnah mss.). This clause is missing in the Mishnah of the Yerushalmi; another indication that the Mishnah of the Leiden ms. does not have the same source as the Yerushalmi Tractates.

60 Mishnah 3:5; this argument follows R. Simeon.
Mishnah 4: “Give me the deposit, the loan, the robbery, and the lost object which you are holding for me.” “An oath that I am not holding anything of yours;” he is liable only once. “An oath that I am holding for you neither a deposit, nor a loan, nor a robbery, nor a lost object;” he is liable for each separate item.

Note 44. The dissents of RR. Eleazar and Simeon apply here also.

61 The same arguments made for oaths addressed to different people can be made for oaths covering different subjects; cf.

Halakhah 4: “Give me the deposit, the loan,” etc. Rebbi Johanan said, Rebbi Simeon implies that if it turns out that he had no wheat, he is not liable for the rest. Rebbi Abba said, even Rebbi (Yasa) will agree with this. If it turns out that he had no wheat, does [the oath] refer to the other kinds? The colleagues said, it does not. Rebbi Ze’ira said, it does. Rebbi Jacob bar Aha said, a baraita supports what the colleagues said. “A woman made a vow as a nazir and her friend heard it and said, ‘so am I’; the first woman’s husband heard it and dissolved the vow for her; the first one is permitted and the
second forbidden. If she said, ‘my intention was only to be like her,’ both are permitted.” Because she said, “to be like her, in her state”. Therefore, if she did not say “to be like her, in her state”, the first is permitted and the second forbidden. Since there, where the essence is not an oath, you say it applies, here, where there was an original oath, not so much more? What Rebbi Johanan said, Rebbi Simeon implies if it turns out that he had no wheat, he is not liable for the rest, if he connects: If he says, [my obligation for] barley shall be like that for wheat; [my obligation for] spelt shall be like that for wheat.

The following is obvious: If her husband did not dissolve [the vow] for the first woman and she (remained) in her vow, she is whipped. Can the second he whipped? Rebbi Yose said, since one is whipped, the other also is whipped. Rebbi Yudan said, is this a stipulation of the court? Should not the second be treated as one who said, “a shall be a nezirah [after] thirty days.” Rebbi Simeon follows his own opinion, for he said, it depends on the collection.

62 This entire Halakhah is a slightly defective copy of a text in Nazir 4:3, explained there in Notes 48-60.

63 In Nazir: R. Jehudah. Since there is no Tanna R. Yasa, the reading “R. Jehudah” has to be accepted. In the next Halakhah, R. Jehudah is identified as the anonymous Tanna of Mishnaiot 3-5.

64 In Nazir, “R. Simeon said, if . . .” Since the next paragraph refers to R. Simeon, this must also be the text here.

65 Read with Nazir: “she violated her vow.”

66 It is assumed that the first became impure; then her nezirut is suspended while she undergoes the purification rite. Should the second woman’s vow be suspended while the nezirut of the first is suspended?

67 This sentence does not belong here; it is from the end of Halakhah 6. The correct text is in Nazir: R. Simeon declares him not liable since his offering was not in the custom of offerers (Mishnah Menahot 12:3). A vow is either valid or not, it cannot be intermittent.
Mishnah 5: “Give me the wheat, and the barley, and the spelt, which you are holding for me.” “An oath that I am not holding anything for you,” he is liable only for one. “An oath that I am not holding wheat, and barley, and spelt, for you,” he is liable for each single one. Rebbi Meir says, even if he says, “wheat, and barley, and spelt,” he is liable for each single one.

Even if the defendant did not use the language of the claimant, as long as the meaning is the same there is liability for a false oath. The claimant used the vernacular plural to describe his claim; the defendant used the biblical collective (Ex. 9:31-32) which in form is identical with the singular. In the Halakhah, the collective for R. Meir is read as singular for the anonymous Tanna.

Halakhah 5: “Give me the wheat, and the barley,” etc. Rebbi Johanan said, the words of Rebbi Jehudah imply collectively one sacrifice, in detail three sacrifices. How is this? A detail wheat, a detail barley, a detail spelt. Collectively one sacrifice, in detail three sacrifices. Detail a third wheat, detail a third barley, detail a third spelt, are these taken together? Come and see; although he holds many details, even so they can be formulated...
collectively or in detail. In which respect? To make him liable for sacrifices. If he held four kinds, two kinds in one detail, two kinds on two details. even so they can be formulated collectively or in detail\textsuperscript{70}.

\textsuperscript{71} As Rebbi Johanan said in the name of Rebbi Yannai: “And I am greeting X,” one can assume that he signed concerning everything; “I am greeting X,” he signed only for the greeting. Rebbi Simeon ben Laqish said, “I am greeting X,” one can assume that he signed concerning everything. What means “collectively”? Rebbi Johanan said, “X divorces Y and Z U.” What means “collectively”? Rebbi Simeon ben Laqish said, “We, X and Z, divorce our wives at place A.” Rebbi Ze’ira said, Rebbi Johanan agrees that if he mentions divorce for each one separately that he needs the typical text\textsuperscript{72} and witnesses for each one separately. The strength of Rebbi Johanan is from the following: “‘That I shall not benefit from this one; a qorban for this one and a qorban for that one.’ Each single one needs a separate opening.”\textsuperscript{73} Rebbi Yose said, the Mishnah supports Rebbi Johanan: “If he wrote a separate text for each of them and the witnesses signed at the end, [only] the one with which the witnesses are read is valid.”\textsuperscript{74}

\textsuperscript{69} This determines the anonymous author of the Mishnah who makes the liability for sacrifices dependent on the way the vow is formulated as R. Jehudah. This is confirmed in the Babli, 38a.

\textsuperscript{70} Irrespective of the complication of the transaction, there always is a formulation of the oath which avoids mentioning any detail.

\textsuperscript{71} From here to the end of the Halakhah the text is from \textit{Gittin} 9:7, Notes 85-101. The following paragraph describes efforts by two men to divorce their wives with one document to save on costs for scribe and parchment.

\textsuperscript{72} While the \textit{Gittin} text everywhere has “boilerplate document” which possibly is Accadic (from the Sumerian) \textit{tuppum} “document”, the spelling here indicates Greek τύπος “figure, form” used as “prescribed form” (of the document.)

\textsuperscript{73} Mishnah \textit{Nedarim} 9:7.

\textsuperscript{74} Mishnah \textit{Gittin} 9:7.
Samuel said. the detailed statement for Rebbi Meïr is the general statement for Rebbi Jehudah; the detailed statement for Rebbi Jehudah is the general statement for Rebbi Meïr. Rebbi Samuel said in the name of Rebbi Ze`ira, the words of the rabbis show that the detailed statement for Rebbi Meïr is not the general statement for Rebbi Jehudah and the detailed statement for Rebbi Jehudah is not the general statement for Rebbi Meïr, as Rebbi Johanan said in the name of Rebbi Yannai: “And I am greeting X,” one can assume that he signed concerning everything; “I am greeting X,” he only signed for the greeting. If you would say that the detailed statement for Rebbi Meïr is the general statement for Rebbi Jehudah, even if he said “I am greeting X,” can one assume that he signed everything? Rebbi Yose said, the Mishnah implies that the detailed statement for Rebbi Jehudah is not the general statement for Rebbi Meïr, as we have stated: “Rebbi Meïr says, even if he says, ‘wheat, and barley, and spelt,’ he is liable for each single one;” and nobody says “even” unless he agrees to an earlier statement. Rebbi Hinena said, in Rebbi Meïr’s opinion, whether he said, “wheat, and barley, and spelt,” or “wheat, barley, spelt,” it is a general statement and details. In Rebbi Jehudah’s opinion, if he said, “wheat, and barley, and spelt,” it is a general statement and details. If he said “wheat, barley, spelt,” it is a general statement without details.  

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75 Gittin 9:7, Notes 93-101. The omissions in the Gittin text show that the text here is original. (This has been recognized in the text there.)

76 Since he reads the words as singulars, not collectives, the entire statement is one unit: “I am holding for you not even a single grain each of wheat, barley, spelt”.

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75 Gittin 9:7, Notes 93-101. The omissions in the Gittin text show that the text here is original. (This has been recognized in the text there.)
Rebbi Yasa in the name of Rebbi Johanan: The words of Rebbi Simeon [imply that] the main claim is for the fine, which is not so for the words of the Sages. Rebbi Illa said, the words of Rebbi Simeon if he claims the fine, shame and diminution; the words of the Sages if he claims shame, diminution, and fine. The rabbis say, the words of Rebbi Simeon if he advances three claims; the words of the Sages if he advances one claim. Rebbi Ze’ira asked

Mishnah 6: “You raped or seduced my daughter,” and he says “I did not rape, I did not seduce.” “I am asking you to swear,” and he says “Amen,” he is liable. Rebbi Simeon frees him from liability since he would not pay the fine by his own admission. They told him, even though he does not pay the fine by his own admission, he pays for shame and diminution by his own admission.

The fines are the statutory fines of the seducer of a virgin (Ex. 22:16) and the rapist of a virgin (Deut. 22:29). Since these fines are imposed in criminal law, they cannot be imposed based on a confession since all confessions are inadmissible in criminal court. It was established earlier (4:4, Note 40) that an oath can create liability for a reparation sacrifice only if the action of the defendant led to a claimant’s monetary loss. Payments for inflicted shame, diminution of marriage prospects, and for rape victims’ pain, are civil claims for which “the admission by the defendant is worth 100 witnesses.” If the daughter is a minor, all money is due to her father.

Halakhah 6: “You raped or seduced my daughter,” etc. Rebbi Ze’ira, Rebbi Yasa in the name of Rebbi Johanan: The words of Rebbi Simeon imply that the main claim is for the fine, which is not so for the words of the Sages.
before Rebbi Yasa, did you hear explicitly from Rebbi Johanan, or from his word? Rebbi Yasa said, for he is of the rabbis’ opinion. Rebbi Mana said, even if he is of Rebbi Illa’s opinion, the words of Rebbi Simeon if he advances one claim; the words of the Sages if he advances three claims.

“Not only matters for which he has to pay the capital, from where double payment, quadruple and quintuple payment, the rapist, and the seducer, and the calumniator? The verse says, *everything about which one would swear falsely.* Is the calumniator’s not a fine? Rebbi Jeremiah says, this is Rebbi Simeon’s who said, all depends on the collection.

79 Babli 38b. In the interpretation of the Babli, R. Simeon holds that a person will go to court for the claim of a sum fixed by law rather than one depending on the sentiment of the judges; the Sages hold that a person always will prefer a civil claim which can be settled by the agreement of the defendant to a criminal trial depending on witnesses. 80 This argument is similar to the previous one. For R. Simeon one will prefer a criminal trial upon the successful completion of which the civil claims can easily be prosecuted; for the Sages one prefers the civil procedure, upon successful conclusion of which the claim in criminal court has much better chances. 81 This sentence most likely is corrupt; Rebbi Simeon deals with the situation where there only is a criminal case (one claim); the Sages consider the civil claims as paramount (three claims). 82 This is always a problem in oral tradition; it is not obvious who formulated the statement. In most cases of a lengthy chain of transmission, the actual formulation is not that of the first author. Since R. Ze’ira immigrated to Galilee after R. Johanan’s death, he has no way of knowing. R. Yasa explains that he formulated the sentence because R. Johanan had endorsed a position equal to that of the rabbis quoted earlier. 83 There really is no material difference between R. Illai and the rabbis since a claim for the fine must be brought in criminal law; the claims for shame and diminution would have to be adjudicated later in civil court. The first claim according to R. Simeon is a single criminal claim. 84 *Sifra Hova (Wayyiqra 2) Pereq 22(9).* This source quotes Lev. 5:21 instead of 5:24 quoted here. The cases enumerated in Lev. 5:21-22 are all about money or money’s worth which the defendant withholds from the claimant, a condition for liability for a sacrifice after a false oath. Double restitution is due from the thief, quadruple or quintuple from the cattle and sheep rustler who sells or eats the animal. The calumniator is the man who accuses his wife of adultery between preliminary and definitive marriages; if proven guilty in criminal court he pays a fine of 100 tetradrachmas (*Deut. 22:19*). 84 The claim against the calumniator is purely about a fine. How could the Sages
apply an oath for deposits in this case since by falsely denying that he had been convicted the calumniator does not deprive the claimant of money that already had been his? The reference here is to Halakhah Ketubot 4:2 where it is established that for R. Simeon a fine becomes property of the claimant only upon payment whereas for the Sages the judgment creates the obligation of the defendant to pay which automatically establishes the amount of the fine as a loan by the claimant to the defendant which in case of the claimant’s death becomes part of his estate and passes to his heirs; it is a legitimate subject of an oath of deposit.

Mishnah 7: “You stole my ox,” but he says “I did not steal;” “I am asking you to swear” and he says “Amen”, he is liable. “I stole but I did not slaughter or sell it;” “I am asking you to swear” and he says “Amen”, he is not liable. “Your ox killed my slave,” but he says “he did not kill;” “I am asking you to swear” and he says “Amen,” he is liable.

Mishnah 8: “Your ox killed my slave,” but he says “he did not kill;” “I am asking you to swear” and he says “Amen”, he is not liable. He said to him, “you hurt me and injured me,” but he says “I did not hurt you and I did not injure you;” “I am asking you to swear” and he says “Amen”, he is liable. His slave said to him, “you knocked out my tooth and blinded my eye,” but he says “I did not knock out your tooth or blind your eye;” “I am asking you to swear” and he says “Amen”, he is not liable. This is the principle, anybody who has to pay on his own admission is liable; but anybody who does not have to pay on his own admission is not liable.
85 Since he denied only the fine, not the capital amount.
86 Since the amount payable is the biblically fixed amount of 30 šeqalim, about a Roman pound of silver (Ex. 21:32), it has the status of a fine.
87 The obligation of the master to manumit the slave whom he has injured is biblical and has the character of a fine.
88 The person who denies any fine adjudicated under criminal law.

Halakhah 7: “‘You stole my ox,” etc. to the end of the Chapter.

Rebbi Isaac asked, should one have to pay the value of the slave by his admission? But what is his problem? Are the entire thirty a fine or is only the excess over his value a fine? If you say, all the thirty are a fine, he does not pay. If you say, the excess over his value is a fine, he pays. There, we have stated: “‘Your ox killed my slave”, but he says ‘he did not kill;’ ‘I am asking you to swear’ and he says ‘Amen’, he is not liable.” Rebbi Haggai said before Rebbi Yose: Explain it if he killed a slave covered with boils. He said to him, but it says afterwards, “‘Your ox killed my son”, but he says ‘he did not kill;’ ‘I am asking you to swear’ and he says ‘Amen’, he is liable. You could explain it if he was covered with boils, then he would not be liable! You cannot do this, as we have stated: “If he killed a man, he has to pay his worth.” Rebbi Ezra said before Rebbi Mana: Explain it following him who said, he shall pay redemption of his person; of the injured. He said to him, if following
him who said, *he shall pay redemption of his person*; of the injured, all is a fine

Does one tell him, be in the clear with Heaven? Let us hear from the following:

“It happened that Rabban Gamliel knocked out a tooth of his slave Tabi. He came to Rebbi Joshua and said to him, I found a reason to manumit my slave Tabi. He told him, you have nothing in your hand; fines only are imposed through witnesses and in court.” This implies that one does not tell him, be in the clear with Heaven. Rebbi Gamliel ben Rebbi Illai asked before Rebbi Mana, does Rabban Gamliel hold with him who says, one is permitted to manumit? He told him, in itself it says that it is forbidden to manumit, for otherwise he should have manumitted him immediately.

89 The entire Halakhah is also in *Ketubot* 3:10, Notes 143-156.
90 This baraita is not found in any other source.
91 Mishnah ‘Arakhin 3:3, about a person killed by an ox known as goring. The entire sentence is not found in *Ketubot*; this seems to point to Ševuot as the primary source.
92 In *Ketubot*: R. Haggai before R. Yose; probably dittography.
93 Ex. 21:30. It is not clear whether “his” refers to the slain person or the owner of the dangerous ox (*Bava qamma* 4:8 Note 108). In *Ketubot* one reads the verse as referring to the owner of the ox; then it is obvious that the money is a fine even though its amount is not biblically fixed. On the face of it, this reading might be preferred; cf. *Mekhilta dR. Ismael* and *Mekhilta dR. Simeon ben Iohai* ad Ex. 21:30. Rashi in ‘Arakhin points to Ex. 21:30 as the source of the Mishnah there; the addition of the sentence (Note 91) supports the reading here as correct and that in *Ketubot* as corrected lectio facilior. Even according to the reading here, the identification of the redemption money as weregilt defines it as a fine.
94 Babli *Bava qamma* 74b.
95 In *Ketubot*: ben Avina, at other places ben Ininia. R. Mana here is R. Mana I; in the preceding paragraph he was R. Mana II.
Mishnah 1: A judicial oath⁴ is about a claim of two silver coins² and the acknowledgment of one perutah³. If the acknowledgment is not of the kind of the claim he is not liable⁴. How is this? “You are holding two silver coins for me;” “I am holding only one perutah.” He is not liable⁵. “You are holding two silver coins and a perutah for me;” “I am holding only one perutah.” He is liable⁶. “You are holding a mina for me,” “I am not holding anything for you,” he is not liable⁷. “You are holding a mina for me,” “I am holding only 50 denar for you,” he is liable. “You are holding a mina for my father,” “I am holding only 50 denar for you,” he is not liable since he is like one returning a lost object⁸.

1 In the case of a claim not proven by witnesses or documents where the defendant disputes part of the claim, the judges will impose an oath on the defendant that he owes not more than he admitted. The basis is Ex. 22:8, where the expression where he says, this is it is read as partial admission on the part of the defendant. The oath cannot be required by biblical standards if the defendant rejects the claim in its entirety; it cannot be administered by rabbinical standards if the amount in dispute or the amount admitted are below a certain threshold.

2 “Silver” denotes the smallest silver coin struck in Hasmonean times, the obolos, 1/6 of a denar. The silver half- oboloi minted in Yehud in Persian times had long disappeared when the Mishnaic system of currency was formulated.

3 A copper coin of Hasmonean times, of varying weight, but in the Mishnah assumed to be 1/32 of an obolos. Half- perutot have been found.

4 This is explained in Mishnaiot 3 ff.

5 Since the claim to be adjudicated is 2 oboloi minus 1 perutah, i. e., 63 perutot, the statutory minimum of 64 perutot is not reached; the oath cannot be imposed by rabbinic rules.

6 Since the claim in dispute is a full two oboloi.

7 Since the claim is rejected in its entirety, it must be proven by documents or
witnesses; the oath cannot be imposed by biblical standards. 8 Since a son cannot swear in place of his father, the son would have to accept a declaration by the defendant that he had owed to the father but returned everything to the latter during his lifetime; the defendant has to be believed if he admits part of the claim.

Halakham 1: “A judicial oath,” etc. The claim, the House of Shamirai say, an oboloi, but the House of Hillel say, two oboloi. The argument of the House of Shamirai seems inverted. There, they say, “silver” is a denar, but here, they say that “silver” is an oboloi. The argument of the House of Hillel seems inverted. There, they say that “money” is a perutah but here, they say that “money” is two oboloi. Rebbi Jacob bar Aha in the name of Rebbi
Hanina: The House of Shammai learn from the initial sale of a Hebrew girl. Since her initial sale was by [at least] a denar, so her preliminary marriage is by [at least] a denar. The House of Hillel learn from the end of her diminution. Since the end of her diminution is a perutah, so her preliminary marriage is by a perutah. What is the reason of the House of Shammai? As it is said, she leaves gratis, without silver. Would we not know that it is without money? Why does the verse say, without silver? From there, that she is sold for more than silver. And what is more than silver? A denar. But maybe “silver” is a perutah, more than silver two perutot. The smallest silver coin is an obolos. So why is it not an obolos? Rebbi Abun in the name of Rebbi Judah bar Pazi: For if she wants to diminish, she diminishes every year by an obolos and leaves. Could she not diminish by a perutah? Rebbi Abun said, think of it. If she wanted to compute the diminution at the start of the sixth year, there would be a perutah left. But the start of the diminution must be an obolos, the end of the diminution a perutah. If there is only one perutah left, can she not pay the diminished amount and leave? Just as the last diminished amount is a perutah, so her preliminary marriage should be a perutah! What is the reason of the House of Hillel? Since her last diminished amount is a perutah, you know that her preliminary marriage is by a perutah. Think of it, if there is only one perutah’s worth left, can she not pay the diminished amount and leave? Just as the last diminished amount is a perutah, so her preliminary marriage is by a perutah.

The argument of the House of Hillel seems inverted. If a person give to his neighbor, etc. If to teach that the court will not act on less than a perutah’s worth, is it not already written, to incur liability for it? To exclude anything not worth a perutah. From here, that it should be more than silver. And what is more than silver? Two oboloi. But maybe “silver” is a perutah, more than silver two perutot. The smallest silver coin is an obolos. So why is it not an obolos? Or vessels; since vessels are two, also “money” is two. How do the House of Shammasi interpret or vessels? Following what Rebbi Nathan stated, or vessels, including clay vessels. Samuel said, if he claimed from him two needles and he admitted to one, he is liable. Rebbi Ḥinena said, only if they are worth two perutot, that the claim should be about a perutah’s worth and
the confession about a *perutah*’s worth. This follows the House of Shamai who do not learn money’s worth from “vessels”. But following the House of Hillel who learn money’s worth from “vessels”, since vessels are two, also “money” is two. Similarly, since “money” means two oboloi, also “vessels” means two oboloi’s worth.

9 This text is copied in *Qiddušin* 1:1, explained there in detail in Notes 77-98. Parallels are in the Babli *Qiddušin* 11b.

The question is, why do the House of Hillel require a larger minimal amount for litigation before a court than the House of Shammai but a much smaller sum than the House of Shammai for legal marriage by symbolic acquisition. The answer is that different biblical verses are the basis. Since a Hebrew slave girl is a minor sold by her father for a maximum of 6 years, or until she reaches the age of 12, or until she is married by the person who buys her or one of his sons. In order to get the maximum for his money, the man buying her might use her as a servant up to the last day of her servitude and then marry her on that day. Since if the original price is divided by the sum of all days of her servitude and only pennies pay for the service of one day, only pennies are left on the last day but nevertheless the marriage is legal. Therefore only pennies are needed for a legal marriage ceremony.

10 Ex. 21:10.
12 Cf. *Qiddušin* 1:1 Note 96 for the arguments which show that this reading is impossible.
13 Quoted in *Tosaphot* 39b, s.v. המ.

Rebbi Abba, Rav Jehudah in the name of Samuel: In any case where two [witnesses] make him liable to pay money, a single witness sets him up for an oath. But do not two [witnesses] make him liable for real estate? It is a difference since one does not swear about real estate. But do not two [witnesses] make him liable for a fine? There is a difference since one does not swear about a fine. But do not two [witnesses] make him liable for a *perutah*? Is it so? Have we not stated: “A judicial oath is about a claim of...
two silver coins and the acknowledgment of one *perutah.*” Our Mishnah, when he swears by his own formulation. What (Rebbi)\textsuperscript{16} Samuel said, when he swears by the formulation of others. Rav Hisda and his group disagree. “A judicial oath”, any judicial oath. There is no difference whether he swears by his own formulation or he swears by the formulation of others, he cannot be liable except for a claim\textsuperscript{17}.

14 In the Babli, 40a, this is a tannaitic statement commented upon by Samuel. 15 Since anything can be decided upon the testimony of two witnesses, possession of real estate can be transferred without documentary proof by the testimony of witnesses. Similarly, real estate can be attached in foreclosure for unpaid fines upon the testimony of two witnesses. 16 A slip of the scribe’s pen; the first generation Samuel only had a medical, not a rabbinic degree. 17 It is not clear whether the sentence is incomplete and one should add “of at least two *oboli*”, or that only the situation of monetary claim and denial can be adjudicated by judicial oath, to support the opponents of R. Johanan in the next paragraph. The interpretation of the statement in the Babli has no relation to the discussion here.

“And the acknowledgment of one *perutah.*” Rebbi Johanan said, if somebody claims that another had stolen\textsuperscript{18}, the latter is not liable unless he partially admit. But all his colleagues\textsuperscript{19} differ from him. How do the colleagues uphold for this is it\textsuperscript{20}? If he claims money from him. If he claims money from him, is that *double he shall pay to his neighbor*\textsuperscript{21}? But this is a mixture of paragraphs.

Rebbi Ze’ira said, he is not liable unless the denial be of two silver coins not counting the acknowledgment of one *perutah*\textsuperscript{22}. This follows Rebbi Johanan’s colleague.
18 The argument is about Ex. 22:8, the basis of the Mishnah. A deposited something with B. B claims that the item was lost and as unpaid trustee he is not liable for damages. A accuses B of having appropriated the item for himself, i.e., to have stolen it. R. Johanan holds that this claim is no different from all other claims adjudicated under the rules of Ex. 22:6-8 and, therefore, an oath can be imposed on B only if the latter acknowledges liability for part of the claim.

19 According to the Babli (Bava qamma 106b, bottom) he is R. Hiiya bar Joseph, a student of Rav and member of R. Johanan’s court.

20 Ex. 22:6 reads: About anything criminal, about an ox, about a donkey, about a sheep, about a garment, about anything lost, if he says, for this is it, the suit of them shall come before the Elohim, he whom the Elohim find guilty shall pay double to his neighbor. Elohim means “the powerful;” it can be applied both to God and to judges. From this double meaning it is inferred that judges impose an oath before God on the accused if the latter has acknowledged for this is it, i.e., a partial admission. On the other hand, double restitution is the fine for the thief. Therefore R. Johanan is justified in his conclusion that since v.6 declares the entire paragraph to be about deposits, the entire sentence deals with the case of A accusing B of theft of the deposit.

21 The colleagues agree that a fine can be imposed only for theft, but they hold that the clause for this is it does not apply to deposits but to repayment of loans and debts (Lev. 5:24). They have to take the position that this very long sentence deals with different subjects in different parts and that an oath is due on demand of the claimant for any accusation that a deposit was stolen.

22 As explained in the Mishnah, after partial admission of any claim, the amount in dispute must be at least two oboloi. In the Babli, 39b, this is the position of Rav, R. Hiiya bar Joseph’s teacher, disputed by Samuel who only requires the total claim to be for at least two oboloi.
Rav and Rebbi Johanan both are saying: Only if he made the loan in the presence of witnesses\textsuperscript{24}. But if he made the loan not in the presence of witnesses, he could tell him, you gave me a loan but I returned half of it. Rebbi Yudan said, in money matters one does not argue “because.” Because he could have told him, you did not give me a loan, he could tell him, you gave me a loan but I returned half of it\textsuperscript{25}? The Mishnah\textsuperscript{26} disagrees with Rebbi Johanan: “‘You are holding a mina for me;’ he said ‘yes’\textsuperscript{27}. The next day he said, ‘return it to me,’ ‘I returned it to you;’ he is not liable. ‘I am not holding anything for you,’ he is liable\textsuperscript{28}.”

23 In Mishnah 1, the sentence about the person who claims he owes only 50 denar seems redundant. It only is inserted to indicate that for the liability to swear, a mina is no different from two oboloi. If the defendant admits to owing a perutah and the claim is at least 2 oboloi, there is liability. The lower bound is not a function of the size of the claim.

24 They hold that undocumented loans never can trigger liability for an oath. Babli 41a (in the name of Rav only.)

25 In the Babli, such an argument is called מָרָע “because”. In the absence of witnesses or documents, if the defendant presents an argument which is less favorable to him than another argument which he could have advanced, the court is forced to give him the benefit of doubt and free him from the oath. It will be seen in Halakhah 7:1 that such arguments are acceptable in general, supporting Rav and R. Johanan against R. Yudan.

26 Mishnah 2.

27 In front of witnesses.

28 Since he had agreed in the presence of witnesses that he owes the money, he cannot change his confession later; he does not swear but has to pay. This last sentence is not in the Mishnah of the Yerushalmi but appears in the Babli and the independent Mishnah ms., including Maimonides’s autograph. The Halakhah shows that it should also be read in the Mishnah.

“‘You are holding a mina for me,’ ‘I am not holding anything for you.’” Issy\textsuperscript{29} said, one who gives a loan to another in the presence of witnesses should claim repayment only in the presence of witnesses. Rebbi Avin said, the word of Issy: If one gives a loan to another in the presence of witnesses,
[the debtor] should not repay except in the presence of witnesses. The Mishnah disagrees with him: ‘‘You are holding a mina for me;’ he said ‘yes.’ The next day he said, ‘return it to me,’ ‘I returned it to you;’ he is not liable. ‘I am not holding anything for you,’ he is liable.

29 Babli 41a. In the Babli, he always appears as Rav Assi even though his ordination preceded that of Rav for whom the title “Rav” was invented.

30 This is not an obligation of the lender’s as implied by Issy’s formulation, but advice to the borrower to protect himself from double claims by the lender.

31 Since the second part of the Mishnah explicitly mentions payment in front of witnesses, the first part must assume that payment was not made before witnesses, even though the admission of the debt before witnesses is equivalent to a loan given before witnesses. The Mishnah contradicts Issy’s formulation; it is compatible with R. Avin’s. The Babli, 41a and Ketubot 18a, explicitly notes that repayment in the presence of witnesses is not a legal requirement.

32 Since he already admitted his entire obligation in the presence of witnesses, there is no occasion for an oath. It is up to the claimant to prove the defendant’s guilt by witnesses or documents.

33 To pay the entire sum, see the preceding Note.
Halakhah 2: “You are holding a mina for me;” etc. Rebbi Abun\textsuperscript{34} said, it is usual for people to give loans to others not in the presence of witnesses but to ask for repayment in the presence of witnesses\textsuperscript{35}.

34 He seems to be identical with R. Avin quoted in the preceding paragraph (which also refers to Mishnah 2) and the father of R. Yose ben R. Bun.

35 Even though it is not legally necessary, it is recommended that requests for repayment be made in front of witnesses to obtain admission by the debtor of the existence of the debt as presupposed in the Mishnah.

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"You are holding a mina for me;" he said “yes.” “Return it to me only in the presence of X and Y.” The next day he said, “return it to me;” “I returned it to you;” he is liable\textsuperscript{33} since he is required to return it in the presence of witnesses. Think of it, if he said, I returned it in the presence of witnesses. Bar Kappa stated: “when X and Y are standing there.” Think of it, if he said, “when X were Y are standing there.” Rebbi Abba, Rav Hammuna, Rebbi Ada bar Ahava\textsuperscript{35} in the name of Rav: A case came before Rebbi, and he said, let X and Y come\textsuperscript{36}.

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\textsuperscript{34} Rebbi Yose ben R. Bun.

\textsuperscript{35} Ada bar Ahava

\textsuperscript{33} It is usual for people to give loans to others not in the presence of witnesses but not those specified by the lender. It seems that the formulation by Bar Kappa requires return only in the presence of the specified witnesses.

\textsuperscript{36} Bar Kapparah requires return only in the presence of witnesses.
If somebody produced both a document and *hazaqah*. Rebbi says, it should be judged by the document. Rabban Simeon ben Gamliel says, it should be judged by *hazaqah*. Rebbi Ze’ira in the name of Rav Jeremiah: A case came before Rebbi Jehudah following Rabban Simeon ben Gamliel. Rebbi Jeremiah asked before Rebbi Ze’ira: How? Did Rebbi switch his opinion? There he said, it should be judged by the document. But here he said it should be judged by *hazaqah*. Would we say, before he changed his opinion? Even if you say, after he changed his opinion? Rebbi only wanted to determine the truth of the matter.

“If somebody occupied real estate on the basis of a document of sale and it was found invalid, this is not *hazaqah*.” Rebbi Jeremiah said, in dispute. Rebbi Samuel said, Rebbi Ze’ira, Rebbi Jacob bar Aha in the name of Rebbi Abinna: it is everybody’s opinion. Rebbi Yose said, there if one produced both a document and *hazaqah*. Here if he came with a document. Rebbi Yudan said, there if he presented two groups of witnesses; here one who contradicts his own proofs.

37 The following does not concern oaths but judicial rules concerning real estate. Babli Bava batra 169b.
38 “Grasping”, a legal term with different meanings in different domains of law (cf. Ketubot 5:5 Note 100, Qiddušin 1:1 Note 30.) It can mean taking possession by active use, but here it means a presumption of permanence of an established status quo ante. The particular application meant here is validation of squatter’s rights after three years of uncontested occupation (which must be combined with a claim, not necessarily proven, of rightful acquisition, Bava qamma 7:4 Note 49.)
39 Obviously all means of proof should be admitted; the question is which should be given the greater weight in the judges’ deliberations.
40 The text is questionable since “R. Jehudah” clearly is Rebbi, (R. Jehudah ben Simeon) as follows from the sequel, and the sentence is missing a verb. Probably one should read: Rebbi judged following Rabban Simeon ben Gamliel.
41 Since Rebbi was a student of his father Rabban Simeon, he certainly started out following the latter’s opinion and only later developed his own, differing, approach.
42 Theoretical preferences should never impede the search for the truth. Babli Bava batra 170a/b.
43 Greek ὄνομα “document of sale”.
44 As mentioned in Note 38, proof of
legal possession by proof of undisturbed occupation is admissible only if based on a claim of legal acquisition. This claim does not necessarily have to be proven; the person in possession might claim, e.g., either that he inherited under intestate rules or that the sale document was eaten by the rats. But if he tries to prove his claim by presenting a forged document, any claim of hazaqah based on the document must be thrown out by the court. The only problem is whether he should be allowed to plead a substitute claim.

45 Tosephta Bava batra 2:2.

46 R. Jeremiah (the fourth generation Amora, not the first generation Rav Jeremiah) thinks that Rebbi would prohibit any substitute claim while Rabban Simeon would allow an examination of proof of undisturbed occupation even after rejection of the document.

47 If the document proving the claim is found invalid, the claim of squatter’s rights is also invalidated. In this Rebbi and Rabban Simeon agree.

48 The difference between Rebbi and his father is about a case where both a document and a claim of hazaqah are presented to the court, where either one alone would be sufficient. The Tosephta deals with a case where a forged document was produced and only after it was rejected a claim of hazaqah was entered.

49 Rebbi and Rabban Simeon disagree on how to handle a case where the claimant produces two sets of witnesses testifying to different aspects of the case. The Tosephta states that after a claim of documentary proof has been rejected, a subsequent claim which is logically inconsistent with the first one will not be considered by the court.

Rebbi Marinus was guarantor for his daughter-in-law. They went to court before Rebbi Hama the father of Bat Qappara and Rebbi Hoshaia. After he had admitted he said to him, I gave. They asked the Elder Rebbi Hyya; Rebbi Hyya asked Rebbi: One who became liable in court cannot be trusted. What is the meaning of “he cannot be trusted”? Rebbi Abbahu in the name of Rebbi Johanan: If he pays on his own initiative, he is trusted when he says, I gave. But from the orders of others, he cannot be trusted. Rebbi Abun bar Cahana said, also for oaths it is the same. What is the meaning of “also for oaths it is the same”? Rebbi Abbahu in the name of Rebbi Johanan:
If he swears on his own initiative, he is trusted when he says, I swore. But from the orders of others, he cannot be trusted.

50 He warranted all claims she might have against her husband from the marriage contract; Babli Bava mesia 17a.

51 This must read: R. Hama the father of R. Hoshiaia and Bar Qappara. The latter’s father was R. Eleazar haQappar.

52 The question here and in the next case is, on whom is the burden of proof. Even though the rule is that “the burden of proof is on the claimant,” since his daughter-in-law had to go to court against him, he has to prove (by witnesses or a receipt) that he paid. Had he not initially denied his responsibility, the burden of proof would have been on the daughter-in-law.

Mishnah 3: 53 “You are holding for me a pound of gold,” “I am holding for you only a pound of silver;” he is not liable. “You are holding for me a gold denar,” “I am holding for you only a silver denar, or a tressis, or a dupondius, or a perutah,” he is liable since all kinds of coin are one.

53 Here starts the discussion of the condition that “the acknowledgment must be of the kind of the claim.”

54 Greek λιτρα, a Roman libra of twelve (Troy) ounces.

55 With the good Mishnah mss. (Kaufmann ms. and Maimonides’s autograph) read: Tressis “three as; something of little value.”

56 “Two as; two bits”.

57 Even if for a claim of a gold denar the defendant admits only a debt of one perutah, 1/4800, it is a valid admission which makes the defendant liable for an oath.
Halakhah 3: “You are holding for me a pound of gold,” etc. 58 “Eight of gold 59 I have in the wallet and one finds there eight gold denarii; or fifty tetradrachmas and one finds 200 denar; or 200 denar and one finds 50 tetradrachmas; these are profane. Eight gold denarii I have in the wallet and one finds fifty tetradrachmas; or 200 denar and one finds 50 tetradrachmas, these are Second [Tithe].”

“You are holding for me a pound of gold,” ‘I am holding for you only a pound of silver;’ he is not liable. ‘You are holding for me a gold denar,’ ‘I am holding for you only a silver denar,’ or a tressis, or a dupondius, or a perutah,” he is liable.” Rebbi Jacob bar Abinna said, earlier, we were saying, “a gold denar” is a detail; “gold denarii” are not detail. If he had said, “a gold denar, a gold coin” it would have been correct. It was found stated, “a gold coin of a denar,” he is not liable.

58 Tosephta Ma`aser šeni 5:5. In the opinion of S. Lieberman, the Tosephta is quoted here to indicate that the rules for Second Tithe and judicial oaths are different.

Second Tithe is the part of the harvest which the farmer should eat with his family at the place of the Sanctuary. If this is not practical, the crop can be redeemed and the sanctity transferred to the coins which then have to be spent in purity at the place of the Sanctuary. Problems arise when in the wallet chosen for the sanctified coins other coins are found which do not directly correspond to the farmer’s memory.

59 Gold coins, but seemingly different from the standard gold denar (or, after Diocletian’s currency reform, the solidus.)

60 A gold denar usually is counted as 25 silver ii. 8 gold denarii are 200 silver denarii or 50 tetradrachmas.

61 This seems to be not a copy of the Mishnah but a text similar to Tosephta Ševuot 5:8,9. The background text is from Tosephta 5:9: “‘You are holding for me a gold denar as gold coin,’ ‘I am holding for you only a silver denar, or a tressis, or a dupondius, or a perutah,’ he is liable.” The incomplete sentence in the Halakhah seems to be a text, not found in the Tosephta, “‘You are holding for me a gold denar,’ ‘I am holding for you only a silver denar,’ he is not liable.” The formulation of the text points to the first two Amoraic generations during the military anarchy in the Roman Empire, when the gold denar was a unit of accounting but not an actual coin. Then the status of a claim for a gold denar is similar to the claim for a pound of gold; if it is answered by an admission of silver units it is not an admission of the kind of the claim. But a claim for an actual gold coin which is answered by an admission of silver or bronze coins is an admission of the kind of the claim. In the rabbinic literature of the Middle Ages, מטבע is the name of the standard gold coin of the author’s country.

62 To hold the person liable who admits
owing a silver *denar* when a gold coin was claimed. 63 In the Tosephta: He is liable; the same in the Babli, 40a.

**Mishnah 4:** “You are holding for me a *kor*\(^{64}\) of grain;” “I am holding for you only a *letek*\(^{65}\) of legumes;” he is not liable. “You are holding for me a *kor* of produce;” “I am holding for you only a *letek* of legumes;” he is liable since legumes are subsumed under produce. If one sued for wheat and the other acknowledged barley, he is not liable, but Rebbi Simeon\(^{66}\) declares him liable. Somebody who sued for amphoras of oil and the other admitted to pitchers, Admon says since he admitted of the kind of the claim he has to swear. But the Sages say, the admission is not of the kind of the claim\(^{67}\). Rabban Gamliel said, I see\(^{68}\) the words of Admon.

**Mishnah 5:** If somebody sued for both vessels and real estate; if [the other] admitted the vessels but denied the real estate, or the real estate and denied the vessels, he is not liable\(^{69}\). If he admitted part of the real estate he is not liable\(^{69}\). Part of the vessels he is liable since non-guaranteed property obligates guaranteed property to be sworn about\(^{70}\).

\(^{64}\) Biblical and Accadic measure of volume, 30 *seah*.

\(^{65}\) A biblical measure of volume, half a *kor*.

\(^{66}\) In all other sources, including the following Halakhah: Rabban Gamliel. He considers all grain to be of related kind.

\(^{67}\) Admon (an authority of pre-rabbinic times) holds that the content of the vessels is determining; the Sages give preference to the determination of the vessels of storage.

\(^{68}\) To see = to accept as obvious.

\(^{69}\) One does not swear on claims of real estate (Mishnah 1). Therefore if the de-
fendant acknowledged his debt of vessels, there is nothing left to take the oath. If he disputes all claims to vessels, there is no acknowledgment since admission of the duty to hand over real estate does not count. 70 Mishnah Qiddusin 1:5, Note 474. If the defendant is liable to take an oath, the claimant can add to the oath all of his outstanding claims even if they in themselves would not force an oath. This is known as “rolling over of oaths.”

A property is guaranteed if the seller as a matter of routine must guarantee the title to the property; this is the case with real estate.

Halakah 4: “You are holding for me a kor of grain;” etc. 71Rebbi Immi in the name of Rebbi Johanan: Our Mishnah if he sued him for wheat and he admitted barley; but if he sued him for two kinds72 and he admitted one of them, everybody agrees that he is not liable. Rebbi Abbahu said about that of Rebbi Immi: Why did we state, “Rabban Gamliel declares him liable”? It comes to inform you of the power of Rabban Gamliel, how far he declares liable. Rebbi Hiyya in the name of Rebbi Johanan: Not only if he claimed wheat and he admitted barley to him, but if he claimed two kinds and he
admitted one of them, the words of the Sages are that he is not liable. Rebbi Simeon ben Laqish said, it is only if he claimed two kinds and he admitted one of them, but if he sued for wheat and he admitted barley according to everybody he is liable. Following Rebbi Simeon ben Laqish: A person went to court before Rav: When he claimed from another wheat, barley, and spelt. Rav told him, wait until he charged you with anything he has to charge, and in the end you will swear one oath about everything. Rebbi Abbahu said, so argued Rebbi Simeon ben Laqish against Rebbi Johanan: In your opinion, since you say that if he claimed two kinds and he admitted one of them, according to the Sages he is not liable, did we not state “if he claimed vessels and real estate; if he admitted the vessels and denied the real estate, the real estate and denied the vessels”? For vessels about vessels he is liable, not so much more for vessels and real estate? He answered him, to transfer an oath to him by the following Mishnah, “since guaranteed property obligates non-guaranteed property to be sworn about.” This does not even disagree with Rebbi Simeon ben Laqish. But did we not state: “Somebody who sued for amphoras of oil and he admitted to vessels”? How do we hold? If he sued him for vessels and oil, and he admitted one of them, everybody agrees that this refers to the claim. But if he sued him for vessels and he did (not) admit oil, everybody agrees that what he admitted did not refer to the claim. Rebbi Ze`ira and Rebbi Abbahu in the name of Samuel: If he sued for vessels full of oil, one said vessels but not oil, the other said oil but not vessels. (Thrown) vessels but not oil. Oil but not vessels? Rebbi Eleazar in the name of Rebbi Abin formulates it as oil buckets. Can one not ask him? If he was paralyzed.

71 A copy of this Halakah is Ketubot 13:4, fully explained there in Notes 79-89. A parallel is in the Babli 40a, Ketubot 108b. 72 Unrelated matters. 73 This has to be deleted. 74 For the inappropriate read “it is understandable”. 75 Oil not in vessels is lost. 76 The difference between Admon and the Sages is one of semantics; any judge could immediately resolve the question by asking the parties what they meant. The only occasion for the disagreement is if one of the parties cannot be interrogated since he became paralyzed.
So is the Mishnah: If he denied part of the real estate he is liable, part of the vessels he is not liable\textsuperscript{77}.

\textsuperscript{77} It is obvious that the mentions of “real estate” and “vessels” have to be switched since one does not swear about claims to real estate. It is pointed out that the entire suit is not about what the defendant admitted but what he denied. There is an oath if the denial is partial, not if it is complete.

\textbf{Mishnah 6:} One does not swear on the claim of a deaf-and-dumb person, an insane person, or a minor\textsuperscript{78}. One does not put an oath on a minor but one swears for a minor\textsuperscript{79} and the Temple\textsuperscript{80}.

\textsuperscript{78} These persons have no standing in court; they cannot bring any action.

\textsuperscript{79} This oath is not the judicial oath based on a biblical decree but the rabbinic oath (Mishnah 7:8) instituted for creditors of orphans who want to collect debts incurred by their deceased father. They have to swear that the debt was not paid.

\textsuperscript{80} The Temple is not a person, cannot bring a suit, or be sued. But if a person dedicates all his property to the Temple, then the creditor can claim to be paid before the Temple may take possession. He has to swear an oath similar to that instituted for creditors of orphans.

\textbf{Halakhah 6:} “One does not swear on the claim of a deaf-and-dumb person, an insane person, or a minor,” etc. It is written: \textit{If a man give to his neighbor}\textsuperscript{81}, to exclude the minor\textsuperscript{82}. So far if a minor gave to him and the minor requested from him. If he gave it as a minor and requested it as an
adult? The verse says, *his neighbor*; only if giving and requesting are equal. Rebbi Abba bar Mamal said, is that not obvious by what Rebbi Johanan said, one who claims a claim of theft in respect of his neighbor’s lost object is liable? “Where is my lost object?” He told him, it was stolen. Rebbi Abba said, explain it if he told him, you already asked me when you were underage and I was freed from swearing for you. An oath of the Eternal shall be between both of them, to exclude the heir. Rebbi Illa in the name of Rebbi Yasa: The baraita is about the heir.

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81 Ex. 22:6.
82 Since a minor is not able to act in law, anything the minor may give does not leave his guardian’s power. Since a minor cannot legally give a deposit, he cannot reclaim it nor ask for an oath in connection with such a deposit. The Yerushalmi Ma’aser šeni 4:4 (Note 67, Eruvin 7:6) finds this in the first words of v. 6, *if a man give*. Babli 42a; Mekhilta dR. Simeon ben Iohai 22:6.
83 If the giving is legal, the request for an oath is legal; this excludes the giving of a deposit by a minor, which is not legal. The Babli (*Bava qamma* 106b) and the Mekhilta derive this from v. 8, *before the judges shall come their mutual affair*; the oath is possible only if both parties have the same standing.
84 Halakhah 8:7; Babli *Bava qamma* 106b. A lost an object with enough unique features that the finder would have been required to publicly ask for its owner to come and reclaim it. B found the object. A has witnesses who saw B taking the object. When A comes to ask B, the latter claims that it was stolen. Since Ex. 22:8 lists lost objects as subjects of judicial oaths, it is clear that B has to swear upon A’s request even though A never handed the object to B. This excludes an interpretation like that given in Note 83. (Babli Yoma 79b, Yebamot 48b, Sotah 8a, Zevahim 17a, 90a, 94b, Menahot 69b, Keritut 3b).
85 An adult can ask for an oath regarding a deposit which he made underage only if the respondent does not claim that he already asked for the deposit back when he was still underage and unable to force an oath.
86 Ex. 22:10.
87 Only the original parties have enough knowledge of the transaction to be able to swear. Heirs can only swear rabbinic oaths, to state that their father did not inform them that the claims were moot or similar formulations. Mekhilta dR. Ismael Mišpatim 16.
88 The baraita explaining the verse *between them* is directed also to the heirs. Since normally only the defendant has to swear, the expression *between them* is interpreted as biblical endorsement of the rule that if the defendant is disqualified as a witness he also is disqualified from swearing; in that case the claimant has to swear that he is entitled to the money. Heirs, who cannot swear in cases of claims against the father’s estate, can as claimants force oaths of debtors to the estate. Babli
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son. She buried him. They came to console her and cut one loaf and found
two denarii rolled into the loaf. This says, whether innocent or guilty, never
swear an oath. 94.

90. The oath will destroy him.
91. *Sach.* 5:5. “It” is the curse mentioned in v. 4.
92. *Job* 2:2, Satan’s answer. Having no joints at knees or ankles, he could never sit
down. The order of topics is better in *Lev. rabba* 6(1) where it is explained that the
Satan has to move perpetually because he has no joints but the curse of a false oath
comes and dwells at length in the house of the swearer.
93. As always in rabbinic literature, in relating bad things about oneself one always
used the third person (“this man, this woman”) instead of the first. The woman
must have used an oath formula to be punished for vain oaths.
94. It is better to pay, or not to sue and not collect money, than force or swear any oath.

Mishnah 7: About the following one does not swear: slaves, and
documents, and real estate, and gifts to the Temple. Not about double
restitution, nor quadruple or quintuple; the unpaid trustee does not swear, the
paid trustee does not pay. Rebbi Simeon says, one swears about things for
which he is responsible if they be alienated, but does not swear if he is not
responsible if they be alienated.

Mishnah 8: Rebbi Meïr says, there are things which are like real estate and
they are not like real estate but the Sages do not agree with him. How is
this? “Ten bearing vines did I hand over to you,” but the other says, “they
are only five.” Rebbi Meir declares liable for an oath but the Sages say, anything connected to the ground is like ground.

Mishnah 9: One swears only on matters of measure, or weight, or count. How is that? “I handed over to you a full house; or I handed over to you a full wallet,” But the other says, “I do not know; take what you left with me;” he is not liable. One says, up to the gutter; the other says, up to the window; he is liable.

Mishnah 10: One gave a loan to another on a pledge and the pledge was lost. He told him, “I loaned you a tetradrachma and it was worth a šeqel,” but the other one says “no, a tetradrachma you loaned me and it was worth a tetradrachma”; he is not liable.

Mishnah 11: “You loaned me a tetradrachma and it was worth two,” and the other says “no, but I loaned you a tetradrachma and it was worth five
denar;” he is liable. Who has to swear? The one who holds the pledge, lest one swear and the other produce the pledge.

Mostly IOU’s. Even though they are money’s worth, they do not fulfill the biblical criteria for a judicial oath.

Most of these will be shown in the Halakhah to be outside the biblical criteria.

The Temple cannot ask for an oath since Ex. 22:6 restricts the judicial oath to transactions between human persons.

The statements (also in Mishnah Bava mesi’a 4:8) refer to the subjects about which one does not swear. Cf. Mishnah 8:1.

In all other sources, including Segalim 2:1, the reading is: sacrifices. If a person makes a vow “to sacrifice an animal”, and if then the designated animal is lost or develops a defect, he has to provide a replacement; this is a vow implying a guarantee. But if he vowed “to sacrifice this animal,” and anything happens to the designated animal, he does not have to provide a substitute; there is no guarantee.

To be harvested. R. Meïr considers ripe fruit as already harvested and therefore movable, the Sages as part of the tree as long as they are hanging on the tree.

Since this is a measurable difference.

The creditor asks for a šeqel (half a tetradrachma), the debtor refuses. He denies the entire claim; the burden of proof is on the claimant.

The debtor agrees that he owes a denar; he admits part of the claim and has to take the oath.

The court has to be careful to avoid pushing people into perjury. The oaths always have to be formulated to minimize the possibility of public perjury. Cf. Bava mesia 1:1, Note 3.

Halakhah 7: “About the following one does not swear,” etc. If he transgressed and swore, Rebbi Johanan said he brings a sacrifice for the oath; Rebbi Eleazar says, he does not bring. Rebbi Abun bar Hiyya said, so does Rebbi Johanan answer Rebbi Eleazar. No. If you pronounced about an oath about testimony which may apply to slaves, documents, and real estate,
what can you say about oaths concerning deposits which do not apply to slaves, documents, and real estate.\textsuperscript{107} But an oath for testimony is not in court.\textsuperscript{108} Would the court admit an oath of a suspect person? Only when he transgressed and swore, you say that he brings a sacrifice for his oath; here also if he transgressed and swore, you say that he brings a sacrifice for his oath.\textsuperscript{106}

105 He swore about a claim to one of the items excluded by Mishnah 7 from being settled by oaths.

106 Since the oath was illegitimate, it is treated as “blurred oath”.

107 This argument is very elliptic. Tosephta 4:1 notes that oaths about testimony have no restrictions on the topics covered, whereas oaths about deposits have almost no restrictions on the people subject to the oath. Where they are equal is that people suspected of perjury are not allowed to swear (Mishnah 7:4).

108 Mishnah 4:3. On the other hand, an oath about deposits is possible only in court.

109 Since oaths for testimony are not administered by the court, it may easily happen that the oath is wrongly applied to a person either disqualified as a relative or as a suspect (Mishnah Sanhedrin 3:6). But how could an oath about deposits be administered by the court to a disqualified person or about a disqualified subject? It can only happen if the person swears without waiting for instructions from the court, which characterizes his action as a blurred oath subject to all its rules.
Some want to understand it from here\(^\text{110}\). *An ox, or a donkey, or a sheep*\(^\text{111}\).* Since these are particular in that they are subject to breaking, kidnapping, and dying, this excludes real estate which is not subject to breaking, kidnapping, and dying. I shall exclude real estate but shall not exclude slaves. Since these are particular in that they are subject to a fine, this excludes slaves which are not subject to a fine\(^\text{112}\).* I shall exclude slaves but shall not exclude documents since they are subject to fines. Since these are particular in that they are subject to overcharging, this excludes documents which are not subject to overcharging\(^\text{113}\).* From here they say, if somebody sells documents to the spice trader\(^\text{114}\), it is subject to claims of overcharging.

Rebbi Ismael explained: *Or a person, if he would swear,* a general statement. *To cause evil or cause good,* a detail. *Anything which a person will blurt out,* a repeat general statement. A general statement followed by a detail followed by a general statement, you only argue in the pattern of the detail\(^\text{115}\).* Since the detail\(^\text{116}\) is about monetary claims, [originating] from himself, which can be collected by court order, having monetary value, which is a fixed value, and are movables, and one is not liable for punishment and fines. Monetary claims, excluding one who said to another, give me the 200 *denar* which you promised me but never gave\(^\text{117}\).* [Originating] from himself, excluding one who said to another, you cursed me and shamed me, who is not liable\(^\text{118}\).* Which can be collected by court order, excluding one who said to another, you raped or seduced X’s daughter\(^\text{119}\).* It has monetary value, excluding documents\(^\text{120}\).* Which is a fixed value, excluding slaves\(^\text{121}\).* Movables, excluding real estate. One is not liable for punishment, excluding one who said to another, you set fire to my grain stack on the Sabbath; who is not liable\(^\text{122}\).* One is not liable for fines, excluding double, quadruple, or quintuple restitution which are fines\(^\text{123}\).*

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110 The exclusions from oaths about deposits enumerated in the Mishnah.
111 *Ex. 22:9,* about the oath of the paid trustee. Breaking, kidnapping, and dying are all mentioned in the verse.
112 The person who kidnaps a slave does not have to pay the double restitution exacted from a thief.
113 The thief of documents has to pay double restitution for the value of the paper on which the documents are written. On the other hand, documents are not traded as
commodities but for the financial values of the contracts written on them. Commodities are subject to the rules of overcharging or underpaying; a transaction which differs more than $\pm 16 \frac{2}{3}\%$ from the going market rate can be voided on the request of the injured party. Financial speculation, such as over the counter stock or bond trades, are not protected by this law (which is based on Lev. 25:14.)

14 If an IOU has been paid, it can be sold as packaging material; then it is a commodity. Babli Bava me’a 56b, where the baraita is quoted as proof that the laws of overcharging apply to penny matters.

15 Halakhah 8:3, Note 83. However, this reference to Lev. 5:4 is out of place since the argument is about Ex. 22:9. The text should be similar to that of Mekhilta dR. Ismael Mišpatim 15 (pp. 300-301): About anything criminal, a general statement. About an ox, or a donkey, or a sheep, detail. About anything lost, a repeat general statement.

16 In Ex. 22:9.

17 A promise does not generate an enforceable claim.

18 Since the paradigm is a deposit made by the claimant, the defendant’s oath is only about actions initiated by the claimant. Suits about matters initiated by the defendant’s actions cannot be settled by oaths.

19 The only persons who can go to court are the woman or her father.

20 Since the value of the document is not determined by the cost of the paper on which it is written.

21 The value of the slave largely depends on his education, which has no standard value attached to it.

22 No money can be recovered for actions which carry the death penalty, even if there are no eye witnesses and therefore no court procedures are possible.

23 Only simple restitution of stolen property is within the purview of a civil court. Fines can be imposed only by a duly authorized criminal court where trials by oath are impossible.

Somebody tears up another’s documents without the latter’s agreement. Rebbi Hanania and Rebbi Mana\textsuperscript{124}, one said, he is liable; the other said, he is not liable\textsuperscript{125}. The one who said he is liable, as a fine\textsuperscript{126}. The one who said he is not liable: he is like one who obstructs the depositions of witnesses. A widow who grabs documents is like a person who ties up the mouths of witnesses\textsuperscript{127}.
Rebbi Immi said, those who write, “on condition that I have the right to seize movables,” cannot collect. Rebbi Mana said, if he writes and declares, “even though the Court will not enforce,” he collects.

These are either R. Hanina of Sepphoris and R. Mana I or R. Hinena and R. Mana II. In the next paragraph appears R. Mana II, two generations after R. Immi. The rule is attributed in the Babli, Bava gamma 98a/b, to Rava who is a known adaptor of Galilean rules and an older contemporary of R. Mana II.

Everybody agrees that he has to pay for the value of the paper or parchment which he destroyed. The problem is whether he has to pay for the mortgages for which the documents were written (assuming that there are no witnesses available who could write a replacement document.)

Since destruction of the document involves both the destruction of the writing material (for which payment can be forced in court if the value was more than a perutah) but also the lien on the debtor’s property which is not something recoverable in biblical law. It has to be dealt with in local police law.

Since even an existing mortgage document can be used for foreclosure only if in court it can be proven to be genuine by the witnesses to the document or witnesses to the identities of the signatures affixed to it. While suborning perjury is criminal, we find no statute against physically preventing witnesses from appearing in court.

While there is freedom in stipulating money terms in contracts (Ketubot 5:10, Note 227), this is valid only in matters that do not involve court actions. In both Talmudim, court-ordered foreclosures are restricted to real estate. Therefore, a contract which provides foreclosure of movables, while valid, cannot be enforced. Only in the Middle Ages, when Jews in many cases could not hold real estate, was the restriction to real estate lifted by Gaonic decree.

If the involvement of the court is denied, there remains a private contract in money matters with unlimited powers of stipulation. While no foreclosure can be obtained from any court, the delinquent party can be judicially censured for not keeping his word (Bava mesi’a 4:2).
Rebbi Simeon says, both most holy and simple sancta; about any sancta for which he is responsible if alienated, I am reading against his neighbor and he lied; but about any sancta for which he is not responsible if alienated, I am reading against the Eternal and he lied.” Rav Huna said, both qualified and disqualified sancta, if he is responsible if alienated, even if they are for the Eternal, I am reading against his neighbor and he lied; but if he is not responsible if alienated, I am reading against the Eternal and he lied but not against his neighbor and he lied.

This has a parallel in Bava qamma 1:2, Notes 118-122 (p). The Mishnah has to be understood that R. Simeon only frees from liability for an oath which is applicable only to disagreements between humans, but not for payment which was fixed at 125% for concealed debts against humans in Lev. 5:20-25, and for amounts due to God in Lev. 5:14-15. (Babli Bava mesi’a 25a/b).

Rebbi Hanina said, One says, a large candelabra, but the other says, a small candelabra; he is liable since we have stated: “One swears only on matters of measure, or weight, or count.” Rebbi Abba bar Mamal said, explain it if it was a candelabra composed of sections.

One says, a large belt; the other says, a small belt. Rebbi Hiyya stated something but we do not know what he stated. If you say “liable”, a Mishnah disagrees, as we have stated: “One swears only on matters of measure, or weight, or count.” If you say "not liable”, a Mishnah disagrees, as we have stated: “If one says the adult one and the other says the underage one, let the seller swear that he sold the underage one. If both say that they do not know, they shall split.

Discussion of Mishnah 9.

Since “large” and “small” are properties defined by measurement, the claim was a claim by measure. On the other
hand, since a candelabra cannot be partially small or large, the admission was not of the kind of the claim.

133 The candelabra can be disassembled and reassembled in different sizes; the admission was of the kind of the claim; R. Hanina’s statement is unquestionably correct. Babli 43a.

134 In this case, “small” and “large” do refer to two substantially different entities; the admission is partial admission of a claim referring to things measurable.

Rebbi Johanan said, the lender can be believed if he said, I lent to you up to the value of the pledge.136 The Mishnah says, also the borrower can be believed, as we have stated: “He told him, ‘I loaned you a tetradrachma and it was worth a šegel,’ but the other one says ‘no, a tetradrachma you loaned me and it was worth a tetradrachma’; he is not liable.137"

A person encountered another in the market and said, you owe me two denarii and your pledge is worth two denarii. He answered, I owe you one denar but my pledge is worth two denarii. The case came before the judges of Nahardea. They said, since everybody agrees that it is worth two denarii, he has to bring witnesses on the other [denar].138 They had not heard that Rebbi Johanan said, the lender can be believed if he said, I lent to you up to the value of the pledge.
A person encountered another in the market and took away his linen cloth saying, “this sheet will not leave my hand until you give me what you are holding for me.” It came before Samuel. He told him, return his linen cloth to him and sue him. Does Samuel follow the judges of Nahardea? There, the pledge was held by him, here the pledge was not held by him.

136 Here starts the discussion of Mishnaiot 10-13 (which in most Mishnah texts form a single Mishnah.) The statement of R. Johanan explains Mishnah 12, where the creditor claims that the amount of the loan does not exceed the value of the pledge.

137 If the borrower disputes the claim, the burden of proof is on him.

138 They put the burden of proof on the creditor for the amount disputed by the debtor.

139 Greek ὁδὸν, Latin sabanum.

140 If the pledge was handed over by the debtor to the creditor, practice has to follow R. Johanan against the judges of Nahardea. But if a pledge was taken by force, it has to be returned before the case can be heard in court. (Sefer Ha’Ittur II reads R. Ze’ira instead of Samuel. This reading is not likely to be correct.)

141 Samuel says, the oath does not move away from between them. If the lender swears, he swears and takes. But if the borrower swears, the other will present the pledge. “Who has to swear? The one who holds the pledge.” Rav and Rebbi Simeon ben Laqish say, about the first part: “‘You loaned me a tetradrachma on it but it was worth two,’ and the other says ‘no, but I loaned you a tetradrachma and it was worth a tetradrachma;’ he is not liable. ‘You loaned me a tetradrachma on it,’” etc. “And the other says, ‘I do not know.’” Rebbi Abba, Rav Huna in the name of Rav: You do not know, the other knows. Rebbi Joshua [the Southerner] asked before Rebbi Jonah:
There you say, you do not know, the other knows; but here you say so? There is desecration of an oath, here there is no desecration of an oath.146.

141 This refers to Mishnah 12, where the creditor swears to free himself from paying.' 142 As the Babli explains, 43b, if both have to swear, the holder of the pledge always has to swear first. 143 What is the rule if in any of the situations of Mishnaiot 10-13 the defendant claims ignorance? 144 If the answer is taken as partial admission, the person would have to swear. Since by his own testimony he is unable to swear, he has to pay. If the answer is not taken as partial admission, then by the rule that in a case of a defense of “perhaps” against a claim of “certain” judgment has to be given for the certain claim (cf. Chapter 5, Note 72), he has to pay.

145 Read א mı ר י י in a reference from Nahmanides’s commentary on this paragraph from the Yerushalmi. 146 In the case of Mishnaiot 11 and 13 there is an oath to be imposed and it is up to the court to devise procedures which make sure that the court does not become a party to perjury. But in the case of “perhaps” against “certain”, no oath can be imposed and there is no need for rules of precedence.
Mishnah 1: All who must swear by Torah standards do swear not to pay. The following do swear\(^1\) and collect: The journeyman, a person robbed or injured, and one whose opponent is suspected of perjury, and the grocer on his account book\(^2\). How does the journeyman do it? He tells him, “give me my wages which you are holding;” he says, “I gave.” He swears and collects\(^3\). Rebbi Jehudah says, only if there is partial admission. How is this? He tells him, “give me my wages of fifty denarii which you are holding;” but he says, “you received from these a gold denar\(^4\).”

1 By rabbinic (popular) standards.
2 These will be explained in the following Mishnaiot.
3 Probably one should vocalize פַּרְסַס (see line 7 below) as פַּרְסַס, “wooden (wax covered) writing tablet.”

Halakhah 1: “All who must swear by Torah standards,” etc. One understands from what is said, an oath before the Eternal shall be between them\(^5\), would we not know that if he does not swear, he has to pay\(^6\)? Why
does the verse say, *its owner shall take it, and he does not have to pay*? But from the moment the owner accepted his oath, he does not have to pay. Rebbi Haggai asked before Rebbi Yose: Is this only following Rebbi Meir or even following the rabbis? Did not Rebbi Assi say in the name of Rebbi Johanan: Rebbi Meir is the one who says that out of a negative one understands a positive? *Its owner shall take it, and he does not have to pay,* therefore if he does not swear, he has to pay. Rebbi Hiyya stated: The unpaid and the paid trustees may stipulate to be like a borrower. Rebbi Hanina said, everybody agrees that in the language of the Torah out of a negative one understands a positive; where do they disagree? In everyday speech.

5  Ex. 22:10.

6  Since the entire paragraph is about the obligations of the paid trustee in case the deposit was lost. Only the case in which he does not have to pay is described; from this it follows that in all other circumstances he has to pay.

7  Babli 45a, *Bava qamma* 107a; *Mekhilta dR. Ismael Neziqin* 16, *dR. Simeon ben Iohai* ad loc., (Tosephta 6:7.)

Probably this statement has to be interpreted following the parallels in the Babli and the *Mekhilta dR. Simeon ben Iohai*: The oath grants the trustee absolute immunity. Even if afterwards witnesses are found who prove that the trustee stole the deposit, he cannot be made to pay. This cannot be inferred from the first part of the verse quoted earlier.

*Mekhilta dR. Ismael Neziqin* treats the statement as paradigm for all oaths prescribed in the Torah and sees it in proof for the statement that “All who must swear by Torah standards do swear not to pay.”

8  The Babylonian name of R. Yasa who is named correctly in the parallel, *Halakhah* 4:14 (Note 118).

9  Why should this simple inference be particular to R. Meir and require R. Johanan’s statement?

10  It really should read: The depositor may stipulate with a paid or unpaid trustee that they should be strictly responsible for the deposit like a borrower (*Mishnah* 8:1). Since this is a money matter, the biblical conditions are only valid if there are no explicit dispositions for deviations from these standards (*Bava mez’i’a* 5:5 Note 81). The verse may be read: If the owner accepts the oath, the trustee does not pay; this leaves open the option that the owner stipulated that he would not accept the oath.

11  There is no disagreement with R. Meir in the interpretation of scriptural verses but there is much disagreement in the interpretation of vows and informal texts.
Rebbi Abin, behold the journeyman should swear and collect. [Rebbi Yose ben Rebbi Abun said, there they instituted that the journeyman should swear and collect;] similarly they instituted for the householder that if its deadline had elapsed, he cannot swear and collect. Rebbi Hiyya stated, if there are witnesses that he claimed it in time, he swears and collects even after a year. Rebbi Yose said, he has only that single day. Rebbi Jonah said, Rebbi Yose ben Rebbi Hanina and Rebbi Simeon ben Laqish disagreed. One said, if he claimed from him during daytime, he has only that day; if in the night he has only that night. But the other said, if he claimed from him and he said, I gave. But if he said, I shall give, the presumption is that he gave. We do not know who said what. Since Rebbi Hama bar Uqba said in the name of Rebbi Simeon ben Laqish: if he claimed from him during daytime, he has only that day; if in the night he has only that night, therefore Rebbi Yose ben Rebbi Hanina is the one who said, if he claimed from him and he said, I gave. But if he said, I shall give, the presumption is that he gave. Rebbi Mana said, sometimes he claims after its time and it is considered as in time. How is this? He claimed from him and he said to him, did I not say to you that I gave at that date? That date becomes as if it were yesterday; one gives him one measure.

עָלַי הֵם שִׁבִּיתִים שְׁהֵם בְּשִׁבְיוֹן מִרְזָכָה, וְסָוָה וְסָוָה שְׁהֵם בְּשִׁבְיוֹן וְשִׁבְיוֹן (וַיֵּשֶׁב וְשִׁבְיוֹן). [רְבֵּעי הָעֲלוֹת שָׁבוּר וָּשָׁבוּר, וְסָבָּה וָּסָבָּה שָׁבוּר וָּשָׁבוּר (וַיֵּשֶׁב וָּשָׁבוֹן).] דָּרְכֹתֵיהֶן שִׁבְיוֹן בִּיבּוּל. הָעְלִיתָם בַּעֲלוֹת וּמָרְרוֹת הָעֲלוֹת וְשָׁבוֹת וְשָׁבוֹת (וַיֵּשֶׁב וְשָׁבוֹת וְשָׁבוֹת).}

Rebbi Abin said, since the householder has many occupations they instituted that the journeyman should swear and collect. Rebbi Abun said, there they instituted that the journeyman should swear and collect; similarly they instituted for the householder that if its deadline had elapsed, he cannot swear and collect. Rebbi Hiyya stated, if there are witnesses that he claimed it in time, he swears and collects even after a year. Rebbi Yose said, he has only that single day. Rebbi Jonah said, Rebbi Yose ben Rebbi Hanina and Rebbi Simeon ben Laqish disagreed. One said, if he claimed from him during daytime, he has only that day; if in the night he has only that night. But the other said, if he claimed from him and he said, I gave. But if he said, I shall give, the presumption is that he gave. We do not know who said what. Since Rebbi Hama bar Uqba said in the name of Rebbi Simeon ben Laqish: if he claimed from him during daytime, he has only that day; if in the night he has only that night, therefore Rebbi Yose ben Rebbi Hanina is the one who said, if he claimed from him and he said, I gave. But if he said, I shall give, the presumption is that he gave. Rebbi Mana said, sometimes he claims after its time and it is considered as in time. How is this? He claimed from him and he said to him, did I not say to you that I gave at that date? That date becomes as if it were yesterday; one gives him one measure.
12 In the Babli, 45a, this is an anonymous statement. Since it comes at the end of a lengthy discussion, it is Amoraic.

13 The insert is from a Genizah text; it is superfluous and questionable in that it fixes the origin of the institution in Babylonia (“there”).

14 Mishnah Bava mesia 9:13, Tosephta Bava mesia 10:5. The journeyman is hired for the day. It is sinful not to pay the journeyman immediately after his work is done (Deut. 24:15). Therefore one may assume that the laborer asked for his wages immediately and that he was paid since it is difficult to assume that the householder would sin in withholding the wages. But if there are witnesses that the laborer asked and was not paid, the presumption of permanence of the status quo ante requires one to assume that he was not paid until the opposite is proven.

15 He disagrees with the Tosephta and holds that the inversion on the rules of oaths is valid only for 12 hours after the end of the working day. Later the householder would have the option to swear and to free himself from paying since it must be assumed that the laborer would have gone to court immediately had he not been paid. This opinion has no parallel elsewhere.

16 The hours worked by a laborer hired for the day are set by communal standards (Mishnah Bava mesia 7:1) but at most are from daybreak to nightfall. Therefore, a day laborer must be paid between the end of his working day and the end of the following night; a worker hired for the night must be paid before the end of the next day.

17 If the laborer claims that he was not paid and his employer says that he was paid, this is a situation analogous to that of an oath about a deposit and the laborer swears and collects. But if the householder agrees that he has to pay, the court has to assume that he will keep his word and fulfill his religious duty in paying promptly.

18 The laborer claimed and the employer said.

19 The 12 hours of the next day to claim, swear, and collect under the rules of the day-laborer.

20 If he paid him in advance; in that case he swears and collects. If a pledge was in his hand; in that case he collects without swearing. If he was a slave. Would the court admit a slave to an oath? If he was suspect? Would the court admit a suspect person to an oath? If both were suspect, it is the dispute between Rebbi Meïr and Rebbi Yose:
the oath returns to its origin, the words of Rebbi Yose; Rebbi Meïr says, they shall split the difference."

20 The employer claims that he paid the day laborer in advance but he has no witnesses and no receipt. The law is not changed; the laborer swears and collects.
21 If the laborer had been paid, he would have returned the pledge.
22 Since the slave has no standing in court, he could not be punished for perjury. An oath sworn by someone exempt from the sanctions for perjury is worthless and an insult to the court.
23 Either he is suspected of a false or vain oath or he gains his livelihood by fraud, as explained in Mishnah 4.
24 Mishnah 4.
25 The meaning of his words is in dispute between Babylonians and Galileans; cf. Halakhah 4, end.
26 Since neither party can swear or has proof; the claim is classified as “money in doubt” which is split evenly between the parties (Ketubot 2:1 Note 9, Bava gamma 5:1 Note 4).

It is obvious: If the householder dies, the journeyman swears to his heirs. Even if the journeyman dies, do his heirs swear to the householder’s heirs? They made this ordinance only for the journeyman. Maybe for his heirs?

Rebbi Eleazar said, if he claimed before witnesses. [But if he claimed without witnesses, he can tell him,] I paid your wages. Rebbi Johanan said, does one not in money matters argue “because”? Because he can say to him, I did not hire you, he can tell him, I hired you and paid your wages. A
baraita\textsuperscript{32} disagrees with Rebbi Eleazar\textsuperscript{33}: “When was this said? If he said, I gave, but the other said, I did not take; I gave you your wages, but he says, I did not take. You hired me, but he says, I did not hire you. The burden of proof is on the claimant.”\textsuperscript{34} It is difficult for Rebbi Eleazar\textsuperscript{33}, if he hired him before witnesses, how can this one say, I did not hire you?

Rebbi Abba from Carthage asked: “You worked for me one day and I paid you.” But the other says, “I worked for you for two days and you did not give anything to me.” It is obvious that he takes for the first day without\textsuperscript{35} oath. The second is the disagreement between Rebbi Johanan and Rebbi Eleazar\textsuperscript{36}. “I hired you for a tetradrachma and gave it to you.” But the other says, “you hired me for two tetradrachmas and did not give me anything.” It is obvious that he takes the first tetradrachma without\textsuperscript{35} an oath. The second is the disagreement between Rebbi Johanan and Rebbi Eleazar\textsuperscript{36}.

27 And collects his wages. Since the Babli does not mention the topic, this is accepted practice. If the day laborer dies, the employer swears to free himself from payment.

28 Since the text is confirmed by a Genizah fragment, it cannot be amended to read “if he hired him before witnesses” as seems to be implied later in the text. R. Eleazar restricts the possibility of the laborer to swear and collect to the situation when he requested payment before witnesses and afterwards comes to court. But if there are no witnesses to the fact that he was not paid on the spot when he requested payment, i. e., there is \textit{prima facie} evidence that the employer did not fulfill the commandment “to pay on his day”, the employer must be given the benefit of doubt and the option of swearing to deny his debt.

29 The text in brackets is added from a Genizah fragment. It is necessary; its existence was conjectured by some commentaries (Ridbaz and Noam Yerushalmi).

30 Cf. Halakhah 6:1, Note 25. The later R. Yudan denies the legal validity of “because” arguments in court but R. Johanan is quoted in the Babli 45b to agree with Samuel that this kind of argument is valid.

31 If the laborer was hired without witnesses or contract, he has no way to establish the fact that he was a day laborer in the service of the person from whom he claims wages and cannot request the court to admit his oath.

32 Tosephta 6:1.

33 It seems that in this text, “Eleazar” should everywhere be replaced by “Johanan” since only R. Johanan requires that the hiring be documented.

34 There is a word missing in the text of the Tosephta, which makes the text incomprehensible. The Tosephta notes that the special rule which allows the laborer to
swear and collect is restricted to the case of the Mishnah, where there is no dispute about the relation of employer and employee, only whether the latter had been paid or not; but a dispute whether such a relationship existed at all must be adjudicated by the general principle that the burden of proof is on the claimant. It seems clear that this situation cannot occur if the hiring was documented.

35 This must read “with”. Since the employer asserts the existence of the hire, the rule of the Mishnah applies.

36 According to R. Johanan, if the hire was not documented the employer must be believed and any additional claim by the laborer has to be proven (e. g., by witnesses). There is no occasion for an oath about the additional sum. According to R. Eleazar, if the claim was made before witnesses, there is no limit to the right of the laborer to swear and collect.

Rav Huna said, if after he swore he brought witnesses that it was standing at the feeding trough, the oath already had robbed it. A Mishnah disagrees with Rav Huna:

’Where is my ox?’ He told him, it was lost. ‘I am putting an oath on you,’ and he said Amen. But witnesses testify that he ate it. He has to pay the value. If he confessed on his own, he pays the value, an additional fifth, and a reparation offering”. The Mishnah if he ate it and only later swore to him. What Rav Huna said, it he swore to him and only later ate it.

37 This paragraph is not a continuation of the preceding but refers to the first paragraph of the Halakhah where it was stated that if the claimant accepted the defendant’s oath, the latter does not have to pay (Note 7). Rav Huna [in the Babli, Bava qamma 106a, a statement of Ilfa (Hilfai) endorsed by Rav Huna in the name of Rav] holds that the oath effects a transfer of property rights; if the claimant accepts the oath, the defendant later ate his own animal, not the claimant’s. However, since here the acquisition is qualified as robbery the claimant can bring a new action for robbery whereas in the Babli Rav Huna in the name of Rav qualifies this as acquisition and denies any obligation on the part of the defendant.

38 Mishnah 8:4.
Rebbi Jehudah’s argument seems inverted. There\(^39\) he says, even if he does not know. But here he says, not unless he knows\(^40\). There since it is not in the form of a biblical oath even (about a biblical oath)\(^41\) he does not know. But here it is in the form of a biblical oath\(^42\).

May one roll over a biblical oath on a biblical oath\(^43\)? Let us hear from the following: One rolls over a biblical oath on a biblical oath, an instituted oath on an instituted oath, a biblical oath on an instituted oath. An instituted oath on a biblical oath? There, one swears and pays, but here in one case he swears and collects, in the other he swears and does not pay\(^44\).

39 Mishnah Bava gamma 6:7. In R. Jehudah’s opinion an arsonist has to pay for everything he destroyed even if he could not have known of its value.

40 Since in this and the following Mishnaiot R. Jehudah always requires partial admission by the debtor, information of the debtor is assumed. (Since the reading “knows” is confirmed by the Genizah fragment, the word cannot be emended to “admits”.)

41 These words are not in the Genizah text, do not make any sense here, and have to be deleted.

42 In Bava gamma there is no oath. Here R. Jehudah requires partial admission to base the administration of an oath on biblical grounds even though the oath itself is a rabbinic institution.

43 Sotah 2:6 Note 167, Qiddushin 1:5 Note 520. If a person is required to swear in court, the opposing party can add to the text of the oath any other oath he might have cause to let the other party swear without having to prove every case separately. For biblical oaths this is proven from biblical texts in the places quoted. For an obligation to swear by biblical standards to add an oath which is a rabbinic institution seems to be a natural consequence. The only problem is whether the obligation to swear a rabbinic oath is cause for the opposing party to add biblical oaths without presenting sufficient proof for that obligation.

44 The question is answered in the negative. The rabbinic oaths mentioned in this Chapter (and probably also the one in Bava gamma 10:3) are not obligations but privileges; there is no reason to pile obligations on top of these.
The Babli (49a, top) agrees for the oaths described in the Mishnah. The answer of the Babli has to be more nuanced since it introduces an Amoraic institution of “an oath of instigation”, unknown to the Yerushalmi, if judgment is given by a preponderance of evidence but not beyond a reasonable doubt. These rabbinically instituted oaths are obligations and can be used as pegs to pile on other obligations.

**Halakhah 2:** “How about a person robbed,” etc. “In another’s house,” not in his courtyard. “To take a pledge,” not for another purpose. Rebbi Issac said, and only by witnesses. If two entered to take pledges from him? It should come like the following: “If he was injured between the two...” But if both were entitled to take pledges? What should be seen there? If they saw two [men] hitting him with sticks.

If they saw him throwing pebbles and broken vessels were found there, he collects without oath.
46 Since Deut. 24:10 only forbids to enter the debtor’s house to take a pledge. This condition does not appear in the Babli; in *Tur* Hoșen Miṣpat 90 (Bet Yosef Note 9) there is an extended discussion about the validity of this statement.

47 Since the rules of the Mishnah imply a suspension of ordinary rules of evidence, they have to be followed to the letter.

48 While the crime does not have to be proven, the *prima facie* evidence of illegal entry has to be established beyond a reasonable doubt.

49 A sentence is missing here as indicated in the not well legible Genizah text. It was omitted by the scribe from the word שָׁנָה to the next occurrence of the same word. But the meaning of the missing sentence is easily reconstructed. If a person was injured when attacked before witnesses by two people, but the witnesses cannot identify the person who actually injured him, he has no civil claim against any of them. Similarly, if witnesses saw two people entered but they did not see which of them actually took something, the rule of the Mishnah cannot be applied.

50 If two creditors were seen entering together it can be compared to the case that witnesses actually saw both perpetrators hitting their victim with sticks. Then the victim can successfully sue both and the debtor can invoke the Mishnah against both creditors.

51 Witnesses saw a man throwing pebbles onto another’s property but they did not see the damage done.

52 The owner of the property can collect damages even though he has no proof that the pebbles actually did the damage. The proof of criminal behavior by the stone thrower is enough.

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53 May one claim extraordinary things? One may, following what Rebbi Johanan said, a person may be rich on the market place and poor in his house; rich in his house and poor in the market place. *There is one who poses as rich*
and has nothing, poses as poor and has great wealth\textsuperscript{54}. Rebbi Abba told\textsuperscript{55}: Bar Ziza’s sharecropper deposited a pound of gold\textsuperscript{56} with somebody. Bar Ziza and Bar Ziza’s sharecropper died; the case came before Rebbi Ismael ben Rebbi Yose. Would one not say that all that Bar Ziza’s sharecropper had was Bar Ziza’s property? It should be given to Bar Ziza’s sons. Bar Ziza’s sons came. He said, the adult ones should take half and when the underage grow up they should take half. Rebbi Ismael ben Rebbi Yose died; the case came before the Elder Rebbi Hyya who said, that argument means nothing since there are people who do not advertise themselves. It should be given to the sharecropper’s sons. The trustee told him, I already disbursed half of it. He told him, what you gave, you gave by court order and what you will give, you will give by court order. May the sharecropper’s sons say to Bar Ziza’s sons, give us what you took? They can tell them, what was done was done by court order. May the underage ones say to the adult, let us share with you? May they tell them, we found a find? Rebbi Isaac said, the case between the adult and underage ones is only comparable to a gift given to them.

\textsuperscript{53} A slightly reduced form of this text is in \textit{Bava qamma} 6:7 (Notes 111-115) and Alfasi \textit{Bava qamma} No. 125. It is clear that R. Johanan and the editors of the Yerushalmi endorse R. Hyya’s judgment and reject R. Ismael ben R. Yose’s.

\textsuperscript{54} \textit{Prov.} 13:7.

\textsuperscript{55} This introduction, missing in both \textit{Bava qamma} texts, makes it questionable whether a real case is recounted here.

\textsuperscript{56} An enormous fortune, under the Severan emperors the equivalent of 900 ketubot.

Mishnah 3: The injured one, how? They were testifying against him that one came to his hand whole and left injured\textsuperscript{57}. He says, you injured me, but the other says, I did not injure; this one swears and collects. Rebbi Jehudah
says, only if there was a partial admission. How is this? He said to him, you injured me twice but the other says, I injured you only once.

57 And it is a reasonable inference that the second person was injured by the first.

Halakhah 3: “The injured one, how,” etc. 58 “Rebbi Jehudah was calling them beaters 59. Any time they are rubbing one another, he swears and collects 60. If he was bitten at a place where he could not bite himself, he collects without oath 61. At a later time if one says, you injured me, but the other says, I did not injure, this is like any other claim 63.”

58 Tosephta 6:2, Bava qamma 9:28 (S. Lieberman Tosefta kiFshutah Bava qamma p. 109.)
59 In the parallel sources which might support a reading (or something similar) “wrestlers”.
60 Or “wrestling”.
61 If there are witnesses for a physical altercation but no witnesses for any detailed happening.

Mishnah 4: And if the opposing party was suspect of perjury, how? Equally oaths about testimony, or oaths about deposits, or even vain oaths, if one of them was a dice-player, a lender on interest, a participant in pigeon contests, or a dealer in sabbatical produce 64, the opposing party swears and
collects. If both of them were suspect, the oath returns to its place, the words of Rebbi Yose. Rebbi Meir says, they shall split.  

64 This list of people not admitted as witnesses nor credible in their oaths is from Sanhedrin 3:6 (Notes 44-47.)

Halakhah 4: “And if the opposing party was suspect of perjury,” etc.  

65 The dice player is the one who plays with small stones. “Not only the player with stones, even one who plays with shells of nuts or pomegranates one does not accept unless he break his stones, and be checked out, and repent in complete repentance.” One who lends on interest one does not accept unless he tear up his IOU’s, and be checked out, and repent in complete repentance.

66 Pomegranates (rimmonim) do not have shells but skins. Perhaps the reference is to Greek ροῦμβος, ροῦμβος, “magic wheel, instrument used in pagan mysteries; rhomb”, from ρόμβεω “to spin, cause to whirl” (E. G.)

Participants in pigeon contests, that is one who bets on pigeons. Whether one bets on pigeons or bets on any domesticated animal, wild animal, or bird, he is not accepted unless he break his tools of the catch and repent in complete repentance.
Dealers in sabbatical produce, that is the sabbatical trader. “Who is a sabbatical trader? One who sits idle all the years of a sabbatical cycle. In the sabbatical year he becomes active and trades in sabbatical produce. One does not accept him before another sabbatical year starts and he can be checked out that he repented in complete repentance.” Rebbi Yose stated, two sabbatical periods. “Rebbi Nehemiah says, repentance in money, not repentance in words; that he say to them, here are 200 denars, distribute them to the poor, and I earned them from forbidden produce.” They added shepherds, extortionists, and any who are suspect in money matters, that their testimony be invalid. Rebbi Abbahu said, shepherds of small animals.

Rav Huna said: Who is the Tanna of “participants in pigeon contests”? Rebbi Eliezer, as we have stated there: “Participants in pigeon contests are disqualified from testimony.” Rebbi Mana said before Rebbi Yose: Is that statement in Sanhedrin Rebbi Eliezer’s? He told him, it is everybody’s opinion. So said Rebbi Yose: We knew that he was disqualified for testimony in money matters. What does he come to testify about? For as he is disqualified in money matters, so he is disqualified to testify in criminal trials. The witnesses for the New Moon are held to the standards of criminal trials, as we have stated: “Any testimony for which a woman is not qualified, they are not qualified for.” Who stated this? The rabbis! Do the rabbis follow Rebbi Eliezer? They agree with him and disagree with him. Rebbi
Huna in the name of Rebbi Jonah said: It follows Rebbi Eliezer in everything. It turns out that this disagreement parallels another disagreement, as it was stated: A perjured witness is disqualified for any and all testimony required by the Torah, the words of Rebbi Meir. Rebbi Yose said, when has this been said? When he was found perjured in criminal matters. But if he was found perjured in money matters, he is disqualified only from that particular testimony. It turns out that Rebbi Yose parallels the rabbis and Rebbi Meir Rebbi Eliezer.

When does one accept one who is suspect in matters of oaths? From when he comes to the court and says, I am suspect. Where do we hold? If one who stands here and is obligated to swear for another, does the court deliver an oath to a suspect person? But we must hold about one who has a suit at a court where he is unknown and tells them, this man is suspect. Also about one who stands and another owes him an oath and he forgives it.

67 Even though the Tosephta quoted in the preceding paragraphs has very stringent conditions, in practical cases the court may apply a more lenient standard.

68 If he is a known suspect, what difference does it make if he declares what the court already knows?

69 This is himself. Since the statement is derogatory, one uses the third person instead of the first.

70 If he is ready to pay rather than have another person (who is not suspect) swear an oath on his demand.

71 Rav Hoshiaia said before Rebbi Immi in the name of the rabbis there: the oath returned to Sinai. Rebbi Johanan in the name of Rebbi Yannai: the oath returned to the parties. He who said, the oath returned to Sinai, it is as if there
was no testimony; the burden of proof is on the claimant\textsuperscript{72}. He who said, the oath returned to the parties, since that man is suspect and cannot swear for me, get up and pay me\textsuperscript{73}.

\textsuperscript{71} Discussion of the statement of R. Yose in the Mishnah (whom practice has to follow in preference to R. Meïr.) Babli 47a.

\textsuperscript{72} If the parties are not able to swear, the special rules of the Mishnah cannot be applied and the suit has to be settled by the regular standards for civil suits.

\textsuperscript{73} This does not apply to the oaths which are the topics of the present Chapter, where the claimant swears and collects, but to the biblical oaths of trustees who swear in order to be freed from payment (Mishnah 1). If such a trustee is barred from swearing, he has to pay. In fact, the opposing party has to swear to collect; cf. Halakhah 6:6, Note 88.

\textsuperscript{74} If the trader claims that the customer received the merchandise but did not pay, he has to prove his claims in court according to local standards; there is no proviso for an oath in the proceedings.

\textsuperscript{75} Because most people are illiterate, there is no standard requirement for a receipt.

\textsuperscript{76} The formulation of the oaths is in the hands of the judges; they have to be careful not to create a situation in which they are seen to cause perjury (cf. Neziqin Bava Mesi’a 1, Note 3.) Since the person who gave the instructions incurred a liability both with the grocer and the workers, both parties can collect since both offer to swear but under the circumstances cannot be allowed to.

\textsuperscript{77} This is the reading in all sources except for R. Nissim in his commentary to
Rif; his reading has to be considered an unjustified emendation. Practice has to follow the anonymous Tanna.

Halakhah 5: “The grocer on his account book,” etc. “Was ‘the grocer on his account book’ not said about one extending credit? For he can tell him, you wrote with this [hand], erase with the other [hand]”\(^78\).

78 Tosephta 6:4. In the absence of proofs, the customer can always claim that he paid his debt but the seller failed to update his books. The customer is not required to preserve the receipt for his payment; the seller has to organize his accounts so that open accounts can be used as proof in court.

Rebbe says, I am saying that these have to swear in the presence of those because of the embarrassment.\(^79\)

79 Babli 47b. He takes care of Ben Nannas’s objection by requiring both parties to swear in the presence of the other (and, in the Babli’s version, in the presence also of the person who has to pay). It can be expected that in this case the party not entitled to payment will not dare to swear falsely.

That is to say, only if he did not introduce them\(^80\). But if he introduced them, the householder has no liability, following what Rebbi Jehudah bar Shalom said: One did introduce the porters to the food merchants\(^81\). They came, but they sent them away without giving them anything. The case came before Rebbi Shammai. Since if the food merchants had said that they took, would at the end not these and those collect? Therefore, they shall collect immediately\(^82\).
80 If the employer directs his employees to the grocer and separately instructs the grocer to give them merchandise on his behalf, he becomes liable to both parties. But if he instructs the grocer in the presence of his employees, he has discharged his duty towards his employees; his debt to the grocer is treated by the general rules of obligations.

81 Greek χάπτηλος “(raw or cooked) food merchant; tavern keeper”.

82 In the case of the Mishnah, the merchants incur no risk since they have regress on the employer. But in the case here, the merchants admit that they did not deliver; the employees have the right to demand immediate payment. Since they were directed to the merchants and these agreed to the order, the merchants have immediately to deliver to the employees, who have no regress on their employer, but the merchants can later bill the employer and collect.

**Mishnah 6**: He said to the grocer, give me produce for a denar; that one delivered and said, give me the denar. He said to him, I gave it to you and you put it into anpale; the householder has to swear. If he gave him the denar and said, give me the produce; he said to him I delivered them to you and you brought them to your house: the grocer has to swear. Rebbi Jehudah says, the one in possession of the produce is advantaged.

**Mishnah 7**: He said to the money changer, give me oboloi for a denar; that one delivered and said, give me the denar. He said to him, I gave it to you and you put it into anpale: the householder has to swear. If he gave him the denar and said, give me the oboloi; he said to him I delivered them to you and you threw them into your wallet: the money changer has to swear. Rebbi
Jehudah says, it is not the practice of money changers to give an as before he took the denarii.\(^{86}\)

83 According to Rashi “a wallet for coins.” No etymology for this word has been given. At other occurrences in the Talmudim, the word seems to stand for ἐπιπλόνη, impilia “felt socks.” This meaning is inappropriate here. A better explanation is ἀμφελόνη “garment, throw-around” (E. G.) or one might read with the Tosephta (6:4) ἀντικόλαξ explained by Kohout as ἀντικόλαξ [πιθωνίσσος] “a short sleeved outer garment.”

84 The simple statement, “I gave it to you,” is insufficient. The manner of delivery must be described.

85 Since both parties agree that the transaction was not on credit, in his opinion the buyer does not have to swear since in his place cash transactions always implied delivery after payment. If the grocer claimed that the transaction did not follow the norm, the full burden of proof is on him as claimant.

86 This is the same argument as in the preceding Mishnah. The money changer will not give out even an as, a quarter (or fifth) of an obolos, without first being paid.

מישנה 8: \(^{87}\)If she had compromised her ketubah, she shall not be able to collect without an oath. If one witness testifies that [the ketubah] was paid, she shall not be able to collect without an oath. From encumbered property, or from orphans’ property, she shall not be able to collect without an oath. If she collects in his absence, she shall not be able to collect without an oath.

87 This is Mishnah Ketubot 9:7, explained there in Notes 159-163. The ketubah (the marriage contract intended to provide financial support for the woman if the marriage is dissolved by divorce or the husband’s death) is compromised if not the full amount is due since the wife has signed a receipt for partial payment. The testimony of a single witness can be contradicted by an oath of the opposing party by biblical rule. If the ketubah has to be paid by the heirs from the estate, the estate is diminished; one requires the widow to swear that the entire amount is due her. The same holds if the rights of a mortgage holder whose claim is posterior to the lien created by the ketubah are diminished by the payment, or if a divorcée claims payment from the property of her absentee former husband.
Ha\lak\ah 6: “He said to the grocer, give me produce for a denar;” etc. Rebbe Hanina said, it is to be differentiated: “Rebbe Jehudah said, when? If the container was lying between them. But if it was in the possession of one of them...”

88 The statement of R. Jehudah in Mishnah 6 is not a statement flatly denying the opinion of the anonymous Tanna in the first case, but it has to be read in the light of a text close to Tosephta 6:4: “Rebbi Jehudah said, when has this been said? At a time when the container was lying (in houses) [between them], but if it was in the possession of either of them, the burden of proof is on the claimant.” The incomprehensible text in parentheses is from the Erfurt ms. (Zuckermandel), the text in brackets from the editio princeps. A similar text is quoted in the Babli, 48a. Five different explanations of the text are offered by the commentary Sifte Cohen (Šulhan Arukh Ho\sen Mişpat 91:1, Note 33) in more than 4 folio pages. Rashi does not comment on the text; the author of Šulhan Arukh follows Maimonides who explains the expression “at a time when the container was lying between them” to mean that the transaction occurred in the public domain. If the container full of produce was in a private domain, the owner of that domain is in possession and there can be no oath; any claimant will have to produce proof according to the regular standards of civil trials. Sifte Cohen disagrees with this explanation since he reads כממתס is “in dispute”; meaning that R. Jehudah disagrees with the anonymous Tanna. But this is the simple meaning of the Mishnah; if R. Hanina notes that the statement of R. Jehudah has to be interpreted following the Tosephta, he clearly states that the text has to be read as an explanation of the opinion of the anonymous Tanna as given in the translation.

Also this needs to be differentiated. It is said about a stranger. But to a fellow town dweller he will give an as before he takes his denar.

89 Also in Mishnah 7 does R. Jehudah point out a case where the anonymous Tanna will not follow the rules of his own Mishnah.

90 Greek ξένος.

91 With people known to him the money-changer will not refrain from deals involving credit.
Rebbui Ze’ira said, this came down in the manner of biblical oaths. And a woman’s ketubah is not from the start in her hand for collection, but only for collection from now on and in the future. Since she claims a document about 200 paid and she says, it is only one mina, she collects without oath.  

There, we have stated: “If she had compromised her ketubah, she shall not be able to collect without an oath. How is this? If her ketubah was a thousand denars and he says to her, you received your ketubah, but she says, I received only one mina, she cannot collect without an oath.” It was stated, one who had compromised, not one who had diminished.

Rav Hisda said, because he went two steps. . . . Because he compromised it in court you say, he cannot collect?

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92 This paragraph refers to Mishnah 8 and is a reworking of one in Ketubot 9:7, Note 166, in a number of details opposing the opinions given there.

As explained in Note 87, the oath of a woman who wants to collect her ketubah when a single witness asserts that it already was paid is biblical. R. Ze’ira notes that the oaths required in the other cases are formulated on the model of that oath.

The rules for collecting a ketubah are not identical with the rules for enforcing an IOU since it may be assumed that a woman does not marry in order to be divorced or become widowed; if she is widowed she may prefer not to claim the ketubah but to be permanently supported by the heirs. This means that the woman acquires the ketubah not with the intent of presenting it for collection. The ketubah becomes an enforceable claim only by the owner presenting it for collection.

In Ketubot, it is stated that if the ketubah is presented with an attached receipt, and the woman claims that the receipt is only for half of the amount and the other half is still due her, this is a compromised ketubah and she may collect only by swearing to the validity of her claim. But here she presents a ketubah for the standard 200 denars but declares that she only claims 100 denars (a mina); therefore she collects without an oath. This is not a compromised but a diminished ketubah (Note 94).


94 Ketubot 9:7 Note 167, Sanhedrin 8:6 Note 69; Babli Ketubot 87b.
95 This is a fragment from *Ketubot* 9:7 (Note 185) *Sanhedrin* 8:6 (Note 72): “Rav Hisda asked: Because he walked two steps, does he lose? If he compromised it outside the court, he collects. Because he compromised it in court, he cannot collect?” It refers to a statement by R. Abin (or Ba) not quoted here and not related to the topics of the Mishnah.

Mishnah 9: Similarly, the orphans can collect only by an oath; “an oath that our father did not instruct us,” our father did not tell us, and we found nothing in our father’s documents that this note of indebtedness was paid.” Rebbi Johanan ben Beroqa testified that even if the son was born after the father’s death he swears and collects. Rabban Simeon ben Gamliel said, if there are witnesses that the father said on his death bed that this note of indebtedness was not paid, he collects without oath.

96 On his death bed.
97 Before this time.
98 No receipt was found.
99 All statements of testimony in the Mishnah are practice. In the known Babli mss., the formulation is an noncommittal “said” instead of “testified.” But since the Yerushalmi version is also that of Rif and Rosh, it must have been the Babli version of their texts.
Halakhah 9: “Similarly, the orphans can collect only by an oath;” etc.

Rebbi Johanan in the name of Rebbi Yannai: One pays from an orphan’s property only if interest is due; Rebbi Nathan says, also a woman’s ketubah. Rebbi Mana said, because of her sustenance. Rebbi Mattania said, who is worried about sustenance? Rebbi Simeon! Since Rebbi Simeon said, all depends on the female. What about it? For attraction, that everybody should jump to marry her. Rebbi Nathan said, also for robbery and torts. Rebbi Yose said, we stated both of these. Robbery from the following: “If it was mortgageable, he has to pay.” For torts from the following: “One pays from minor orphans’ property only from the least valuable.” So is the Mishnah: One pays for torts from minor orphans’ property only from the least valuable. But was it not stated, the son shall stand in the father’s place; one estimates torts from the most valuable land, creditors from average quality, and a woman’s ketubah from the least valuable? Rebbi Yose ben Rebbi Abun said, explain it as everybody’s opinion about testamentary dispositions.

Here you say, “one does not swear on the claim of a deaf-and-dumb person, an insane person, or a minor.” But there you say, “one swears for a minor and the Temple.” If one pays from the minor’s property. But can one collect from a person in his absence? Rebbi Jeremiah said, explain it about a contract for which interest is due. Would the court collect interest?

Explain it that it was guaranteed for a Gentile.

Alexis said before Rebbi Mana: We act much better than you do. We send edicts. If he comes, it is good. If he does not come, we irrevocably give away his properties. He answered him, we also act in this way; we have...
the heralds announce for thirty days. If he comes, it is good. If he does not come, we irrevocably give away his properties. He said to him, think of it, if he was in a distant place. He said to him, we send three letters, one after thirty days, one after the next thirty days, and one after the next thirty days. If he comes, it is good. If he does not come, we irrevocably give away his properties. Rebbi Hanina said, that is, if he was present at the trial and then fled. But if he was not present at the trial, we cannot irrevocably give away (nor) announce.

114 You find that one may say that Hanan and Rebbi Simeon said the same thing. Just as you say that practice follows Hanan, so practice follows Rebbi Simeon.

100 The entire Halakhah is from Ketubot Chapter 9. The first paragraph is from 9:8, Notes 185-197 (and Gittin 5:3 Note 52.).

101 Babli Arakhin 22a.

102 The text in Ketubot and Gittin reads: “on the collection,” i.e., on the woman’s decision whether to ask for payment of the ketubah or for upkeep (lodging, food, and clothing) from the estate.

103 Babli Ketubot 84a.

104 Mishnah Bava qamma 10:1.

105 Mishnah Gittin 5:3.

106 In the other two sources correctly: “R. Yose ben R. Abun said, here about an adult orphan, there about an underage orphan.” The sentence here intruded from Halakhah 10 where it belongs. The word used here is Greek, διαθήκη “written will”. Cf Mishnah Bava mesi’a 1:7.

107 Both quotes are from Mishnah 6:6.

108 From here on the text is in Ketubot 9:9-10, Notes 201-204.

109 Quoted in Tosaphot Gittin 50b s.v. סנסיכי.

110 Ketubot 9:9-10, Notes 205-212.

111 Greek διαθήκηματα.

112 Quoted in Tosaphot Ketubot 88a, s.v. דנה.

113 One has to read with Ketubot “but only”. This reading is confirmed by a Geonic responsum (S. Assaf, Responsa Geonica, Jerusalem 1942, p. 103) which declares the statement to represent (Babylonian) general practice.

114 A shortened version of Ketubot 9: 9-10, Notes 213-216.

115 Ketubot 88b.
Mishnah 10: The following have to swear without a claim: Partners\(\text{116}\), and sharecroppers\(\text{117}\), and trustees\(\text{118}\), and a wife trading in the house\(\text{119}\), and a family member\(\text{120}\). If he says, what do you claim from me? “I want you to swear to me,” he is liable\(\text{121}\). After partners or sharecroppers distributed, he cannot force them to swear. If an oath was rolled over to him for another cause, one may roll everything over to him\(\text{122}\). The Sabbatical year remits an oath\(\text{123}\).

116 If a partnership is dissolved, each partner has to swear that he did not retain any common property.

117 The owner may ask the sharecropper to swear that he delivered the entire crop to the landlord who then will return his share to him.

118 Greek ἐπίτροπος. He administers the estate of another person and at the end of his tenure has to swear that he did not illegally take anything for himself.

119 If the husband gives her capital which she uses for trade, he is entitled to the entire gain and can demand that his wife swear that she did not retain anything of the net gain.

120 One of the brothers who acts as managing trustee for an undistributed inheritance. If the inheritance is distributed, he has to swear that he did not illegally take anything for himself.

121 The person obligated to swear cannot ask the person demanding the oath whether he suspects him of any dishonesty.

If a person is required to swear, the one demanding the oath can add to the text of the oath any claim he might have against the person swearing even if totally unrelated to the matter before the court and for which he could not force a separate oath.

A precondition for rollover, which is a biblical rule, is that the original oath must be by biblical standards; a purely rabbinic oath cannot be extended. This implies that the oath required by the Mishnah is considered biblical since the person acting for others in money matters automatically agrees that he is responsible and thereby fulfills the requirement of partial admission (Mishnah 6:1).

123 Since the Sabbatical remits debts (Mishnah Ševi`it 10:1), the creditor cannot after the Sabbatical year ask for any oath regarding the remitted debt (Tosephta Ševi`it 8:6).
Halakha 10: Rav said, if the debtor died, the creditor swears to his heirs. Even if the creditor died, the creditor’s heirs swear to the debtor. But if the debtor died first and after him the creditor, the creditor already was obligated for an oath to the debtor’s sons and nobody makes his sons inherit his oath. Rebbi Johanan heard and said, should that one eat and enjoy it?

124 Babli 48a. Since the sons cannot inherit the father’s oath they cannot swear and the borrower’s estate does not have to pay. 
125 Since there is little doubt that there was a loan, the creditor’s sons can swear the orphans’ oath (Mishnah 9), which is not the father’s oath, and collect on basis of that oath. In the Babli, this opinion is ascribed to R. Eleazar.

Rav Hyya bar Ashi in the name of Rav: A document produced by the creditor in the creditor’s handwriting is invalid, for I am saying that he has practiced writing documents. This implies that in the hand of another it would be valid. Rebbi Abinna in the name of Samuel: It is always invalid unless it be in the creditors’ possession but in the debtor’s handwriting. What about this? Rebbi Yose ben Rebbi Bun said, explain it according to everybody about a testamentary gift.

126 This is a shortened version of a paragraph in Bava mese’a 1:8 (Notes 113-115); two different name traditions are reported in Sefer Ha’ittur 1, 41b (Notes 49-51). 
127 A term derived from Accadic šat ‘aru “to write”, usually used for documents of indebtedness. The statement is in the Babli, Bava mese’a 20b.
128 A document not signed by outside witnesses. 
129 A codicil in the testator’s handwriting attached to a will always is valid.
Rebbi Yose\textsuperscript{130} said, this means if he trades without account; it does not apply if there are accounts. Also the family member trades without accounts\textsuperscript{131}.

Rebbi Ze`ira agrees with Rebbi Yose\textsuperscript{132}. A man came for judgment before Rebbi Ze`ira who required him to swear for two \textit{denars}\textsuperscript{133}. He told him\textsuperscript{134}, do I not owe you two \textit{denars}? Here they are thrown to you. He\textsuperscript{134} answered him, and cloth of fine wool X and Y. Rebbi Ze`ira said, either you give him everything he claims from you or you swear to him everything which he rolls over to you\textsuperscript{122}.

How far does one roll over? Rebbi Johanan said, until he say to him, you are my slave\textsuperscript{135}. Think of it, could he be Cohen and Hebrew slave\textsuperscript{136}? Is there such a slave today\textsuperscript{137}?

\textsuperscript{130} In \textit{Sefer Ha`ittur} 1, 43a (Note 81): R. Yose bar Bun.
\textsuperscript{131} If there is a regular account book which lists all transactions, the person trading can open his book for inspection instead of swearing, and therefore avoid the impression that he admits part of the claim. This rule is not in the Babli, nor in Rif or Maimonides.
\textsuperscript{132} This does not refer to the preceding paragraph; the third generation R. Ze`ira cannot be said to be dependent on the fifth generation R. Yose or R. Yose ben R. Bun. The reference is to a statement in \textit{Bava mesi`a} 3:1 Note 20, that it is the free choice of a person to swear or to pay up and that a person willing to swear is free to change his opinion if too many other items are added to the oath.
\textsuperscript{133} A very minor sum.
\textsuperscript{134} The opposing party in the suit.
\textsuperscript{135} Babli \textit{Qiddušin} 28a.
\textsuperscript{136} Since a Hebrew slave may have his earlobe pierced if he refuses to leave his state of servitude (Ex. 21:6) but a Cohen with a pierced earlobe is barred from service in the Temple; no court could tolerate that a Cohen would be sold as a Hebrew slave.
\textsuperscript{137} Since the institution of Hebrew slavery was intrinsically intertwined with that of the Jubilee, it was abolished with the Babylonian captivity never to be re-instituted (cf. Introduction to Tractate \textit{Qiddušin} p. 3).
Rebbi Samuel ben Rav Isaac said, watch it for it is otherwise¹³⁸. What do we say? Watch it, for it is not negligible. “Owner,” “owner.”¹³⁹ Since the owner mentioned there is subject to annulment, so also here he is subject to annulment¹⁴⁰. The Sabbath annuls things which are his hand’s loans¹⁴¹ and annuls the corresponding oaths; the Sabbath does not annul things which are not his hand’s loans, nor does it annul the corresponding oaths. “For anything which the Sabbath annuls it annuls the corresponding oath; anything which the Sabbath does not annul it does not annul the corresponding oath¹⁴².”

¹³⁸ From the arrangement of the Mishnah one gets the impression that partner, sharecropper, trustee, etc., are freed from their oath in the Sabbath year. But the Sabbath eliminates only oaths referring to loans which are actually annulled in it.

¹³⁹ In Ex. 24:14 anybody having a law suit is called לָעֳג; in the laws of annulment of debts (Deut. 15:2) the creditor is called לָעֲג. This sets up the argument of “equal cut” indicating that the person going to court is one subject to the laws of the Sabbath.

¹⁴⁰ Since after annulment the creditor cannot go to court to collect the debt, neither can he go to court to have an oath imposed on the debtor. (Explanation of the commentary To’afot Re’em, R. Abraham Abba Schiff, to Sefer Yere’im §164 Note 17). The Babli 49a has a different interpretation of Deut. 15:2.

¹⁴¹ The expression used in Deut. 15:2.

¹⁴² Tosephta Shevi’it 8:6. There is no redundancy here. The preceding sentence was the argument, the last sentence is the tannaitic formulation.
The Mishnah already was part of stolen swear about breakage, abduction, and death, but pay for the lost and the everything borrower, the paid keeper, and the renter. The unpaid trustee swears about anything and that in case anything was lost:

Mishnah 1: There are four kinds of keepers: The unpaid trustee and the borrower, the paid keeper, and the renter. The unpaid trustee swears about everything; the borrower pays for everything; the paid keeper and the renter swear about breakage, abduction, and death, but pay for the lost and the stolen.

1. The same Mishnah already was part of it was not his fault.
2. He has to swear that he did not take beyond their control.
3. They do not pay for what happened anything and that in case anything was lost.

Mishnah (fol. 38b line 37) This Mishnah already was part of stolen swear about breakage, abduction, and death, but pay for the lost and the everything. The unpaid trustee swears about everything; the borrower, the paid keeper, and the renter pay for the lost and the everything. The unpaid trustee swears about breakage, abduction, and death, but pay for the lost and the stolen.

1. The same Mishnah already was part of it was not his fault.
2. He has to swear that he did not take beyond their control.
3. They do not pay for what happened anything and that in case anything was lost.
**Halakhah 1:** “There are four kinds of keepers,” etc. Rebbi Johanan said, there are four kinds of keepers and they become liable only through acquisition. Rebbi Jacob bar Aha in the name of Rebbi Eleazar: Also in matters of robbery they become liable only through acquisition. Rebbi Yose ben Rebbi Bun said, a baraita said so: “one who contracts with another for a field,” etc. Rebbi Hananiah said, Rebbi Abun, also in theft cases they become liable only through acquisition. Rebbi Hananiah in the name of Rebbi Phineas, our Mishnah said so: “If he was pulling it to lead it out but it died on the owner’s property, he is not liable. If he lifted it or had it led outside the owner’s property when it died, he is liable.” If he lifted it inside the owner’s property it is as if he had taken it out of the entire property of the owner. If he was pulling it and it left, only after it left the entire property of the owner. Rebbi Abbahu in the name of Rebbi Johanan: If it was standing at his feeding trough. Rebbi Abun bar Hyya asked: If it was standing at his feeding trough then even if he did not pull it! But we must deal with the case that it was standing in the public domain. Does Rebbi Abun bar Hyya follow the House of Shammai, since the House of Shammai say, “he shall be hit by less or more”? How do we hold? If it was standing in the public domain and he intended to rustle it when it died, according to everybody he became liable by that intention. If he did not start to pull it, according to everybody he is not liable. But we most hold that it was standing at a feeding trough on his property. As Rebbi Abun bar Hyya said, following the House of Shammai. Rebbi Abun said, there he acquired without the knowledge of its owner; but here when he acquires with the knowledge of its owner.

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4 In the Babli, *Bava qamma* 79a, this is treated as an old (tannaitic or pre-tannaitic) rabbinic institution. Since keepers incur financial responsibilities, the moment in time when responsibility is transferred from owner to keeper must be well defined. The rules of this transfer are borrowed from the rules of buying and selling. Any act which would transfer property from the seller also transfers responsibility from owner to keeper; absent such an act no responsibility is transferred.

5 Tosephta *Bava meṣı`a* 9:12. If somebody contracts to care for a field and then neglects his duty so that there is no yield, he can be sued for damages only if there was an act of acquisition.

6 The act of stealing is completed and
the thief responsible for double restitution only after an act of acquisition, such as putting the stolen object in his pocket. If the thief is discovered while he is dragging away some object in the owner’s house, he is not liable for double restitution since as long as the object was not lifted it was not acquired by the thief as long as he did not reach the public domain.

7 Mishnah *Bava qamma* 7:8, Notes 83-84, describing rustling of animals.

8 Babli *Ketubot* 31b, an opinion ascribed to Rabina II. An animal pulled or pushed into the public domain is not thereby acquired by the thief; it becomes acquired only when it is brought into the thief’s private property.

9 Since we hold that the property of a person acquires abandoned property found on it (cf. *Gittin* 6:2, Note 71). Since the owners do not know where their lost object is, they cannot make a mental reservation which would annul the acquisition.

10 In the Babli, *loc. cit.*, opinion ascribed to Rav Aha (bar Rava), of the last generation of Babylonian Amoraim.

11 Mishnah *Bava mesi’a* 3:13. The dishonest keeper in the opinion of the House of Shammai has to pay the larger of the values of the object either at the time it was given to him or when it should have been returned. The House of Hillel makes him pay the value at the time he took possession, R. Aqiba the value at the time of the claim. This has nothing to do with the problem here. The Mishnah there continues: “If somebody intends to take the deposit, the House of Shammai hold him liable, but the House of Hillel say, he is liable only from the moment he takes it.” Since in the public domain acquisition is effected only by lifting the object, not by dragging it, liability for cattle rustling in the public domain exists only for the House of Shammai.

12 The statement is elliptic. If he intended to rustle an animal but did not do it, even the House of Shammai agree that thought without action is without legal consequences. If he pulled the animal along, and declared before witnesses that he intended to rustle this animal, even the House of Hillel will agree that he accepted liability for his act.

13 The Mishnah in *Bava mesi’a* notes that for the House of Shammai full liability starts when the animal enters the robber’s property while the House of Hillel require an act or at least a declared intent of acquisition.

14 While an act of acquisition may be required for liability both of the keeper and of the thief, the details of what is considered as such an act are different in the two cases since acquisition by the will of the owner is less restrictive than that against his will.

15 It is written: *If a man give to another, etc’, to keep*. To keep, not to tear it up. To keep, not to throw it away. To keep, not to give it away as a gift.
Rebbi Yose said, only if he said to give it to anyone he likes. But if he said, to X, since he is obligated to keep it is as if he kept it for him\(^{17}\).

15 Babli Bava gamma 93a.
17 The paragraph gives the rules of the unpaid keeper who in case of loss has to swear that he did not appropriate the article for himself and that it was not lost by his negligence. But if he received the article in order to dispose of it, or to distribute it to the poor, even if it was lost there cannot be any oath. R. Yose points out that this applies only if the charge was to distribute to the poor, not if it was to be delivered to a designated person. Rashi explains in Bava gamma that the depositor cannot sue because he renounced ownership and the poor cannot sue since the keeper was free to give to any poor person of his choice.

It was stated: *If it was stolen from the man’s house*\(^{16}\). Not from his roof. Rebbi Eleazar said, that means, from an unprotected roof. But a fortified roof is like a house\(^{18}\).

18 Taking anything from a flat roof visible from the outside is not theft but robbery since it was in the open. There can be no double restitution in this case. But if the roof was surrounded by a wall so that nothing deposited there could be seen from the street it is theft and subject to its laws. Keeping a deposit on an open roof is gross negligence on the part of the keeper.

It was stated, *if it was stolen from the man’s house*\(^{16}\), not from the borrower’s house. *If it was stolen from the man’s house; not from the house of the paid keeper or the renter*\(^{19}\)? Since he is obligated to watch it, it is as if it...
referred to him\(^{20}\); for you may say that there are three paragraphs\(^{21}\). The last one about the borrower, the middle one about the paid keeper and the renter, the first one about the unpaid keeper. The borrower who profits from all pays everything. The paid keeper or the renter, because he profits partially and gives partial profit, swears about part and pays part. The unpaid keeper who does not profit at all swears and leaves. What does he swear? I did not commit anything\(^{22}\). What is the situation if others know that he did not commit anything? Let us hear from the following: If the thief was found but has nothing with which to pay, may he say to him\(^{23}\), swear to me that you were not thinking to take it? Let us hear from the following: If the thief was not found\(^{24}\). Therefore, it he was found he is not liable.

19 The verse speaks of the unpaid keeper, who swears that he did not take it and that he was not negligent but does not pay. The corresponding cases for the paid keeper and the borrower are not mentioned in the verses. The definite article is interpreted to mean that the verse insists that it was stolen from this man’s house; the rule does not apply to others. By the reason explained later it is clear that the borrower cannot swear; he must pay. There is no intrinsic reason in the verse to exempt the paid keeper and the renter. Why are they exempt? In the Babli Bekhorot 11a, the verse is read to exclude institutions; cf. Bava gamma 7:1 (5d 46), Notes 10 ff.

20 There is a reason to extend the rule of the unpaid keeper to the paid one.


22 He did not take anything for his personal use and was not criminally negligent.

23 The owner of an object stolen from an unpaid keeper. If he cannot recoup his loss he might be tempted to let the keeper swear in the hope that he might prefer to pay rather than swear.

24 Ex. 22:7. If the thief was found, the unpaid keeper is absolved from any oath. Mekhilta dR. Ismael Neziqin 15.
It is written, if a man give to his neighbor a donkey, or an ox, or a sheep etc. An oath before the Eternal shall be between the two of them. Stolen, if it was stolen stealing from him. Lost, and if, to include the lost one. So far following Rebbi Aqiba. Following Rebbi Ismael? Rebbi Ismael stated: Since you say that he pays for theft which is close to duress, for loss which is not close to duress not so much more?

For the borrower only the broken is written. From where loss and theft? It is logical. Since the paid keeper and the renter who do not pay for the broken or the dead have to pay for theft and loss, the borrower who pays for the broken or the dead certainly has to pay for theft and loss. It was stated about this: This is an argument de minore ad majus which cannot be challenged.

From where the abducted? It is said here, it was broken or died; and it is said there, it dies or was broken. Since there the abducted was included, here also the abducted was included. So far following Rebbi Aqiba. Following Rebbi Ismael? Rebbi Ismael follows Rebbi Nathan. Rebbi Nathan says, or, to include the abducted. Or following Rebbi Meïr who said, an equal cut at the place it comes from. Since there one swears for duress, also here one swears for duress. Still following Rebbi Nathan, for Rebbi Nathan said, or it died, to include the abducted one.

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26 Ex. 22:10.
27 Ex. 22:11. The verse is intentionally misquoted; it is written "and if", not "if", as noted in the sequel.
28 This is Rebbi Aqiba’s signature argument that all conjunctions which are not absolutely necessary imply an addition which can only be determined by tradition.
29 In the Babli, Bava mes’i’a 94b, this is characterized not as a statement of R. Ismael but as a Galilean Amoraic statement in the spirit of R. Ismael. A different argument is in Mekhilta dR. Ismael Neziqin 16, (ed. Horovitz-Rabin p. 305).
30 This an argument of R. Ismael; Mekhilta dR. Ismael Neziqin 16, (ed. Horovitz-Rabin p. 306).
32 This is not an argument of R. Aqiba but of R. Ismael [Mekhilta dR. Ismael Neziqin 16, (ed. Horovitz-Rabin p. 306)]. R. Aqiba’s argument is attributed here to R. Ismael.
33 Chapter 4, Note 33. If broken or died and died or was broken defines an equal cut, since the abducted is mentioned in v. 9 it also is implied in v. 13.
34 A follower of R. Aqiba has the choice of arguing either following R. Meïr or R. Nathan.

Rebbi Yudan asked: 35 If he claimed the claim of a thief and duress? He told him, an armed robber came and took it; does he have to pay double restitution of duress? Rebbi Yose said, if it were so one should state “the paid keeper and the renter;” but we have stated: We do not find that the paid keeper and the renter pay double restitution of duress. On this we have stated, “this is an argument de minore ad majus which is questionable”36. Rebbi Hanina said, if you say so, should you say, this is an argument de minore ad majus which is questionable36, for he can tell him, let us say that the borrower pays double restitution. On this it was stated, this is an argument de minore ad majus which cannot be challenged37.

35 The proviso that the keeper may have to pay double restitution is mentioned only for the unpaid keeper, where Ex. 22:8 is interpreted to mean that the keeper claimed the deposit was stolen but it was proven in court that he himself took it. The paid keeper or the renter must pay for stolen items (22:11); in general, a claim that the item was stolen by such a keeper is an agreement that he has to pay; even if the claim is false there is no reason for double restitution. But if the keeper claims that the item was abducted by force, he may swear to this fact to free himself from paying (v. 22:9). An argument is missing here, which is supplied in the Babli, Bava mesi`a 57b, viz., that in an orderly commonwealth an armed robber will hide his weapons in public and only show them to his intended victim. This makes armed robbery an instance of theft (Sanhedrin 8:3, Notes 44ff.). Therefore the question arises whether a false claim of armed robbery makes the paid keeper or the renter liable for...
follow the rules of the unpaid keeper, the argument becomes invalid; it is more than questionable, it is shown to be false.

37 Therefore the claim of armed robbery is not a claim of theft; there never can be double restitution by the paid keeper or the renter. The Babli (Bava mesi’a 57a/b) disagrees and holds that in this case the paid keeper has to pay double restitution (Maimonides Hilkhot Genevah 4:4).

It was said, if its owners were with him, he does not have to pay. Does he have to swear? Rebbi Ze’ira said, he swears. Rebbi Hanina and Rebbi La both are saying, he does not swear. A baraita supports Rebbi Hanina and Rebbi La: “Breakage, abduction, and death for which he is not liable in the cases of the paid keeper and the renter, and the borrower with the owner is not liable, without the owner is liable; loss and theft where the paid keeper and the renter are liable, is it not that a fortiori the borrower be not liable with the owner but liable without the owner?” For him who says it is obvious that he swears, should he not have to pay?
Rebbi Hanina\textsuperscript{45} in the name of Rebbi Yudan: A baraita supports Rebbi Ze`ira. “The borrower, for whom the Torah was restrictive, with the owner is not liable, without the owner is liable; the paid keeper, for whom the Torah was lenient, \textit{a fortiori} with the owner should not be liable, without the owner should be liable.\textsuperscript{44}” If you are saying, his problem was swearing, he should have stated “the paid keeper and the renter\textsuperscript{45}.” That means he only needs it for payment. It is difficult for Rebbi Ze`ira: the borrower swears if the owner was with him; if the owner was not with him he must pay. The unpaid keeper swears, whether the owner was with him or was not with him\textsuperscript{46}. You are saying that where the borrower pays the paid keeper swears\textsuperscript{47}. Where the paid keeper swears, the unpaid keeper should not be liable. Where the paid keeper pays, the unpaid keeper swears\textsuperscript{48}. What do you state about an unpaid keeper when the owner be with him\textsuperscript{49}? But some are asking, what do you state about an unpaid and a paid keeper, whether or not the owner be with him\textsuperscript{50}? Rebbi Abin said, \textit{any word of criminality}\textsuperscript{46,51}. Rebbi Mana said, do we not find that the Torah treated loss and theft equally for the borrower? Therefore, we shall treat breakage, abduction, and death equally both for the unpaid and the paid keepers\textsuperscript{42}.

38 \textit{Ex.} 22:14. If the borrower had asked not only for the use of an animal and/or agricultural or mechanical implements but also had asked their owner to help him in his work, then the disposition over animals or tools never was transferred to the borrower; in case the animal died or it and the tools broke or were taken by force the borrower does not have to pay. But if the authority over animal and/or tools was transferred, the borrower has to pay if anything happens to them.

39 The Babli does not treat the question, which seems to be that even though the owner retains the power of disposition over his property, the borrower might have to swear that he was not in any way the cause of the accident.

40 Since \textit{Ex.} 22:9 excuses the paid keeper in the case of an unobserved accident but requires an oath that the keeper did never ever use the animal or object for himself (or the renter that he never overstepped the conditions of his lease).

41 There is no verse referring to the responsibility of the borrower for cases of loss and theft but it cannot be less than that of breakage, etc. It cannot be more since the conclusion of a logical argument cannot be stronger than the premise.

42 Since the oath would absolve from payment, it is clear that R. Ze`ira holds that the borrower has to pay if he cannot swear. But this contradicts the argument of the
43 This is the late Amora R. Hinnena, not the early R. Hanina mentioned earlier.
44 In fact his responsibility depends on whether there was a formal act of transfer of responsibility, Note 4.
45 Since in general the paid keeper and the renter follow the same rules. But since the renter pays the owner for the use, in matters of payment there is reason to differentiate between the two.

46 Ex. 22:8.
47 If the loss was because of the unlawful actions of third persons.
48 If the loss was because of the negligence of the keeper, when the object was lost, or probable negligence, when it was stolen.
49 As stated before, if there was no formal transfer of responsibility, the unpaid keeper does not even swear.
50 Since the distinction is made only for the borrower, we do not even know whether such a distinction is of any relevance for the other kinds of keepers.
51 This explicitly excludes the distinction about the participation of the owner for paid and unpaid keeper; the previously quoted baraitot are contradicted.
52 This is a different argument but supporting R. Abin’s conclusion.

(38c line 37) שופט. על קהל דבר-שופט. תופת ששלח גז על דע משולה.
רבי יוסי ב. תנית י”ג. ח”א קומא. י”א.
כנל תחת רביинтерес. נשבירה חמתשה מנתי.
ול כמי כיב. נטל חמתשה אל מחמת קילקלושא. רבי שמנואל רבי אבנה ביש רבי ינור.
שלוחת שטאקמה בשומר חום אתו חיך עד שיחסרו. רבי שמנואל ביצי קומי רבי אבנה. חומ.
שלאחרת י基站. חיקר ואפילו אלו חישרו. אמר לו הל”ח. לי תקד י”א שיאלקרא Düו ויסי ביר מהלקה.
 közל לנהל. י”א אינרו ל”חל. אפילי אלו חישרו. י”א נוכר. דע שקחישרו. י”א coppia ליגל.
תקיחת בין לקומאיר בין לקומאיר אתור פチョ. י”א למיר גצל.
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אמר בי.”ב.
בר איבתה בשם דיב יתקי. צימרא לקומאיר ש Barth בצימרא שמידיק בר.”ב.
ולא צימרא שמידיק בר.”ב צימרא ש Barth בצימרא שמידיק בר.”ב.
(Game 128c, line 43)
בר עלאר בשם רבי יתקי. צימרא לקומאיר ש Barth בצימרא שמידיק בר.”ב.
ולא צימרא לקומאיר ש Barth בצימרא שמידיק בר.”ב.
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ולא צימרא לקומאיר ש Barth בצימרא שמידיק בר.”ב.
בר עלאר בשם רבי יתקי. צימרא לקומאיר ש Barth בצימרא שמידיק בר.”ב.
ולא צימרא לקומAIR.Bart CHARO שמידיק בר.”b.
בר עלאר בשם R.
,. Yמק’il B.
Yמק’il B.
בר עלאר בשם רבי יתקי. צימרא לקומAIR. B.
Yמק’il B.
בר עלאר בשם R.
,. Yמק’il B.
Yמק’il B.
Text of the Escurial ms. of Bava mesi’a 3:13
What is the reason of the House of Shammai? Any word of criminality. How do the House of Hillel explain the reason of the House of Shammai? “Criminality,” any word of criminality. Explain it if he appropriated it through an agent.

Rebbi Yose bar Hanina asked, what was said, to take? Took? Did not Rebbi Hoshia state, “it broke”; if it turned into vinegar he pays for everything. It turned into vinegar only because of its spoilage. Rebbi Samuel, Rebbi Abbahu in the name of Rebbi Eleazar. “Grabbing,” which was mentioned for the unpaid keeper makes him liable only if he diminished. Rebbi Samuel asked before Rebbi Abbahu: What has been said about taking? That he diminished or even if he did not diminish? He said to him, is that not Rebbi Yose bar Hanina’s question, to take, took? If you say “to take”, even if he did not diminish. If you say “took,” only when he diminished. If you say “to take”, if he returned it either to its former place or to another place he is not liable. If you say “took,” if he returned it to its former place he is not liable, to another place he is liable.

Rebbi Abbahu in the name of Rebbi Johanan: “Guarding” is mentioned for the unpaid keeper and “guarding” is mentioned for the paid keeper, but “guarding” mentioned for the unpaid keeper is not similar to “guarding” mentioned for the recipient of a fee. “Guarding” mentioned for the unpaid keeper; if he guarded it sufficiently he is not liable. For a paid keeper one estimates it only relative to his body. Therefore one judges him; if the guarding was appropriate he is not liable, otherwise he is liable. One does not say, if another had been there, he could have saved. If he saved, he is not liable; if he did not save, he is liable.

Rebbi Eleazar in the name of Rebbi Hoshia: “Grabbing” is mentioned for the unpaid keeper and “grabbing” is mentioned for the paid keeper, but “grabbing” mentioned for the unpaid keeper is not comparable to “grabbing” mentioned for the paid keeper. “Grabbing” mentioned for the unpaid keeper does not make him liable unless he move it. “Grabbing” mentioned for the paid keeper, he is liable from the moment he puts his staff and his bag on it.
Rebbi Yose ben Nehorai heard this and said, I am not accepting this, but in any case he is not liable unless he move it. Rebbi Immi in the name of Rebbi Eleazar: But did not Rebbi Hoshaia state it in this way? If “grabbing” had not been mentioned for the unpaid keeper as unnecessary, I would have inferred from the recipient of a fee. Since the recipient of a fee, with whom the Torah was strict, does not become liable unless he move it, it is only logical that an unpaid keeper, with whom the Torah was lenient, not be liable unless he move it. For which purpose was “grabbing” mentioned for the unpaid keeper since it was unnecessary? To be strict with the recipient of a fee; from the moment he puts his staff or his bag on it he is liable. Rebbi Yose said, if you say so, you infer about the premise to restrict it. For one could say to him, since the recipient of a fee, with whom the Torah was strict, does not become liable unless he move it, the unpaid keeper, with whom the Torah was lenient, should not be liable even if he move it. But it must be the following: “Grabbing” should not have been mentioned for the paid keeper as unnecessary, for I would have inferred from the unpaid keeper. Since the unpaid keeper, with whom the Torah was lenient, is not liable unless he move it, the recipient of a fee, with whom the Torah was strict, becomes liable when he moves it. For which purpose was “grabbing” mentioned for the recipient of a fee since it was unnecessary? To be strict; from the moment he puts his staff or his bag on it he is liable.

53 The remainder of the Halakhah does not refer to Mishnah 8:1 but to Bava mesi’a 3:13. There exists a full parallel in the Escurial ms. of Neziqin (E), reproduced above, and a not quite complete version published by R. H.Y.D. Azulai almost 200 years before the discovery of E; cf. Bava mesi’a 3:13, Note 89. The Leiden ms. there quotes only the first line followed by “etc.” This justifies considering the text of E as second source for the text here.

A short parallel to the discussion here is in the Babli, Bava mesi’a 44a.

54 Mishnah Bava mesi’a 3:13 states that according to the House of Shammai, a keeper becomes unfaithful and liable for any and all damages to the deposit if he thinks of appropriating it for his own use; according to the House of Hillel only the actual taking triggers liability. The House of Shammai include in “word of criminality” also unspoken words which would prevent the keeper from swearing to his innocence.

55 Giving orders certainly involves words. If the order was criminal, the person giving the order can no longer swear truthfully that he did not take the deposit even if he himself never touched it.
This refers to the second part of Mishnah Bava mesi`a 3:13: “If he tilted the [wine] amphora and took a quartarius, and then it broke, [the unpaid keeper] pays only for a quartarius. If he lifted it and took a quartarius, and then it broke, he pays for all.” It is assumed that the amphora did not break because of any action of the keeper’s; then the unpaid keeper does not have to pay for the loss. But if he lifted the amphora with the intent of stealing from it, it becomes his property and he is liable for the entire value of amphora and contents. The question now is whether “took” means that he actually removed anything from the amphora’s contents or whether just moving the amphora with the intent of taking triggers full liability. Since in a sale of movables it is not the payment which transfers property rights and liabilities from seller to buyer but the buyer’s moving the item, it is not unreasonable to read “took” as “intent to take” since action of moving is decisive.

R. Hoshaia qualifies the first statement. If he only tilted the amphora but did not move it from its place and it broke he only pays for what he took, to apply only to the case of breakage. If he tilted the amphora, took some wine, and then the wine turned into vinegar, he is liable to pay for all the wine since we say that tilting the wine and pouring from it caused the rest to turn into vinegar.

Read with E: “the motion”.

The biblical expression יָדָיוּ כְלָל “sent his hand”, mentioned both in Ex. 22:7 and 10.

Only if he actually took from it, not if the volume diminished by his handling the amphora for his own purposes.

But it lost volume after he handled it not for its own sake.

Text of E: “Guarding mentioned for the paid keeper, even if he enclosed it in an iron wall one is not satisfied that he guarded. If it was in his power to save, he is liable. If it was not in his power to save, he is not liable.” This refers to the rule that the paid keeper is liable for theft and loss.

Since the keeper is paid, it would have been the responsibility of the owner to hire a sufficient number of guards to watch over his property.

This belongs before the preceding sentence; cf. Note 62.

As made clear in Mishnah Bava mesi`a 3:13.

Since the paragraph about the paid keeper (Ex. 22:9-11) refers to animals, the example given refers to animals. If the keeper has to shepherd an animal, he cannot use it as his beast of burden even for the most minute load to his own benefit.

He requires an act of acquisition; he is liable only if he makes the animal move from the place where he put his bag on it.

Since earlier we had established a strict order of liabilities, the unpaid keeper being liable less than the paid keeper or renter who in turn are liable less than the borrower, a mention of liability after “grabbing”, appropriating the deposit, for the unpaid keeper would automatically imply the same for the paid keeper and the renter. In the first version, the argument is upside down as R. Yose points out.

Since the mention of “grabbing” in v. 10 is unnecessary if it meant the same as in v. 7, it follows that the rules of liability for
the paid keeper are more strict than those for the unpaid keeper. The detail, in what these rules are more strict, is not mentioned in the biblical text; it must be left to the traditional understanding of these rules.

Mishnah 2: He said to the unpaid keeper, “where is my ox?” He told him, “it died,” but it broke, or was abducted, or stolen, or lost. “It broke,” but it died, or was abducted, or stolen, or lost. “It was abducted,” but it died, or broke, or was stolen, or lost. “It was stolen,” but it died, or broke, or was abducted, or lost. “It was lost,” but it died, or broke, or was abducted, or stolen. “I want you to swear;” he answered “Amen”. He is not liable.

Mishnah 3: “Where is my ox?” He told him, “I do not know.” “What are you telling?” But if had died, or broke, or was abducted, or stolen, or lost. “I want you to swear;” he answered “Amen”. He is not liable.

Mishnah 4: “Where is my ox?” He told him, “it was lost.” “I want you to swear;” he answered “Amen”. Witnesses testify that he ate it: he has to pay its value. If he confessed himself he pays the value, and a fifth, and a reparation sacrifice.

Mishnah 5: “Where is my ox?” He told him, “it was stolen.” “I want you to swear;” he answered “Amen”. Witnesses testify that he stole it: he has to pay double restitution. If he confessed himself he pays the value, and a fifth, and a reparation sacrifice.
Mishnah 6: He said to a person on the market, “where is my ox which you stole?” This one says, “I did not steal,” but witnesses testify that he stole it: he has to pay double restitution. If he slaughtered or sold it, he pays quadruple or quintuple restitution. If he saw that witnesses appeared and said, “I stole but did neither slaughter nor sell,” he only pays its value.

70 These are the cases enumerated in Ex. 22:6,9, where the unpaid keeper swears but does not have to pay. Breakage refers to vessels, not to animals; it is included since it appears in the verse.

71 Even though he swore under a false category, since he swore correctly to the fact that he does not have to pay he is not liable for the sacrifice required for a false oath.

72 He has to pay restitution. But since he did not claim falsely that it was stolen, there is no fine. In general there is no fine imposed if the culprit confesses before witnesses testify against him.

73 Following Lev. 5:20-25.

74 This is not the double restitution of the common thief (since the owner himself handed the animal or vessel over to him) but the double restitution required by Ex. 22:8.

75 Ex. 21:37.

76 He did not swear; there is no additional fifth and sacrifice. There is no fine for the confessed thief; therefore he pays only the value even though he falsely claimed not to have slaughtered or sold the animal.

77 This paragraph is from Sanhedrin 3:10, Notes 190-192.
Rebbi Johanan asked: May the oath of a deviant woman be liable for a blurted oath? Where do we hold? If she is in error in sin and oath she is not deviant. If she is intentional in sin and error there is no sacrifice. Rav follows Rebbi Aqiba. If Rebbi Ismael would argue like Rebbi Meïr it would follow, since Rebbi Meïr said: “Amen that I was not defiled, Amen that I shall not be defiled.” But you may question this.

78 The suspected adulteress who is put under oath by the Cohen, Num. 5:22.
79 If she slept with a man thinking it was her husband and swears while in this belief, she is not forbidden to her husband and not deviant.
80 There is no sacrifice for an intentional false oath.
81 This refers to Halakhah 3:1. R. Aqiba admits the possibility of sacrifices for inadvertent blurted oaths (Lev. 5:4) referring to past events as well as future ones but R. Ismael allows only future-directed blurted oaths. Rav (Chapter 3 Note 7) admits only past-directed blurted oaths; as just shown this is not possible in the case of the deviant woman.
82 R. Meïr explains the repetition “Amen, Amen” in Num. 5:22 that the first one is past directed, the second future directed. R. Ismael might agree that this is a special case where a biblical verse also requires the inclusion of references to past events. Then the question of R. Johanan might make sense since the possibility of an oath by a deviant woman depends on past events but the designation as blurted oath must depend on future happenings, not covered by the previous argument.
83 Mishnah Sotah 3:1.
84 Since practice would follow neither R. Ismael nor R. Meïr there seems to be no point for R. Johanan’s question.

Mishnah 7: He said to the borrower, “where is my ox?” He told him, “it died,” but it broke, or was abducted, or stolen, or lost. “It broke,” but it died, or was abducted, or stolen, or lost. “It was abducted,” but it died, or broke,
or was stolen, or lost. “It was stolen,” but it died, or broke, or was abducted, or lost. “It was lost,” but it died, or broke, or was abducted, or stolen. “I want you to swear;” he answered “Amen”. He is not liable.

“Where is my ox?” He told him, “I do not know.” “What are you claiming a claim of loss, swore, and confessed before witnesses came he pays the value, a fifth, and a reparation sacrifice. Whether before witnesses came or after witnesses came he pays the value, a fifth, and a reparation sacrifice. When after witnesses came he pays double restitution and a reparation sacrifice; the fifth is counted for him in the double payment, the words of Rebbi Jacob. They said to Rebbi Jacob, where do we find a reparation sacrifice without fifth? He said to them, if he swore, and swore,
and swore, we find a reparation sacrifice without fifth. But the rabbis say, there is a fifth for the capital; there is no fifth for oaths."

Another explanation: *He shall pay the whole worth and add its fifths to it*. Rabbi Ze’ira said, it was stated thus: “He claimed a claim of loss, swore, and dedicated a sacrifice. Since if he confessed after witnesses came it would be sanctified, it is sanctified here. He claimed a claim of thief, swore, and dedicated a sacrifice. Since if he confessed after witnesses came it would not be sanctified, it is not sanctified here, but following Rabbi Jacob it would be sanctified.”

87 Bava qamma 65a/b, Tosephta Bava qamma 8:8.
88 A paid keeper or renter who pays for stolen and lost deposits but pays no double restitution if he in fact stole it but claims that it was lost.
89 Rabbi Jacob holds that if he swore falsely he has to pay the fifth of the value of the deposit but if he then repeats the false oath there is no underlying money involved and therefore no money due. The rabbis hold that double restitution is only due from the thief after conviction by the court. For payment after confession neither fifth nor a sacrifice are due.
90 Lev. 5:24. The plural “fifths” implies that for repeated false oaths about the same subject additional fifths are due (Sifra Hovah, Wayyiqra II, Parašah 13:12; Babli Bava qamma 103b, Bava mesi’a 54b). This disproves R. Jacob’s statement.
91 A reparation offering is obligatory; it cannot be voluntary. Since the rabbis hold that double restitution excludes oath and confession, no sacrifice is possible even in the case where the verse demands double restitution in any case, as for the paid keeper who falsely claimed that a thief had stolen the item (Note 74).

Rebbi Johanan said, if somebody claims against another a claim of thief he pays double restitution. If he slaughtered or sold, he pays quadruple or...
quintuple restitution. There, they say, he pays quadruple or quintuple restitution. Rebbi Pedat in the name of Rebbi Hoshia: There we state and it supports Rebbi Johanan: “Where is my ox?” He told him, ‘it was lost.’ ‘I want you to swear;’ he answered ‘Amen’. Witnesses testify that he ate it; he has to pay its value. If he confessed himself he pays the value, and a fifth, and a reparation sacrifice.” Is there eating without slaughtering? Rebbi Haggai said, explain it if another slaughtered. And the following said so: He said to one in the market place, “where is my ox which you stole?” He says, “I did not steal.” “I want you to swear,” and he says “Amen.” He is liable. Because he is one in the market place. But if he said it to one of the keepers, that one would be liable. The baraita when he ate it and then swore. What Rebbi Johanan said, if he swore and after that ate it.

92 The following implies that one has to read “does not pay.”
93 In Babylonia they transmit R. Johanan’s saying as requiring multiple restitution; Babli Bava qamma 106b.
94 Mishnah 4.
95 The Mishnah does not require multiple restitution for eating the animal entrusted to him. This proves that there is no quadruple or quintuple restitution and double restitution only if the keeper claims that it was stolen from him.
96 The Babli, Bava qamma 71a, emphatically disagrees, in the name of R. Johanan. Since the verse brackets slaughter and sale together and a sale is impossible without a third party, so slaughter by a third party acting on his orders also triggers the liability of the thief.
97 This has to read “is liable.”
98 This has to read “would not be liable (for quadruple or quintuple restitution).”
99 If the unpaid keeper had sworn or the paid keeper had paid, the animal became his and if he slaughtered afterwards there can be no additional restitution.

Mishnah 9: He said to the recipient of a fee or to a renter, “where is my ox?” He told him, “it died,” but it broke or was abducted; “it broke,” but it died or was abducted; “it was abducted,” but it died or broke; “it was stolen,”
but it was lost; “it was lost,” but it was stolen. “I want you to swear;” if he said “Amen”, he is not liable.

Mishnah 10: “It died, or it broke, or it was abducted,” when it was stolen or lost. “I want you to swear;” if he said “Amen”, he is liable. “It was lost, or stolen,” when it died, or broke, or was abducted; he is not liable. This is the principle: Anybody who swears to his benefit is liable, to his detriment is not.
Halakhah 9: “He said to the recipient of a fee,” etc. Rebbi Johanan said, one who claims before his neighbor a claim of thief in a case of loss is liable. “Where is my lost object?” He told him, “it was stolen.”

Rebbi Johanan said, one who claims before his neighbor a claim of thief is liable only after an oath. What is the reason? It is said here “grabbing” and it says there “grabbing.” Since “grabbing” mentioned there only applies after an oath, so also “grabbing” mentioned here only applies after an oath.

Rebbi Johanan said, one who claims a claim of loss, swore to him, and afterwards claimed a claim of thief is not liable. Rebbi Johanan asked: May one be liable for a blurted oath in case of an oath regarding a claim of thief? The argument of Rebbi Johanan seems to be inverted. There he said, if he claimed a claim of loss, swore to him, and afterwards claimed a claim of thief is not liable. And here he says so? There it is obvious to him, here it is problematic for him. What is problematic for him? He saw and found it simple.

Rebbi Hyya bar Joseph said, one who claims before his neighbor a claim of thief is liable only after he denied in court. Where do we hold? If about him who already owes an oath to his neighbor, even if he was swearing out of court he is liable. But we must hold about him who saw them coming. They wanted to make him swear but he jumped in and swore.

Rebbi Hyya in the name of Rebbi Johanan: When it was standing at his feeding trough. Rebbi Ze’ira asked: how was it said? “If it was standing” or “even if it was standing”? If you say “even if it was standing,” it makes no difference. If you say “if it was standing,” then the argument of Rebbi Johanan is inverted. There, he said, if he claimed before him a claim of loss, had been swearing to him, selected a sacrifice, and then claimed a claim of duress, he is not liable. But here you are saying so? Rebbi La said, there is a difference since he absolved himself of confession by the oath. They objected to the opinion of Rebbi Ze’ira: “‘Where is my ox?’ He told him, ‘it was stolen.’ ‘I want you to swear;’ he answered ‘Amen’. Witnesses testify that he stole it: he has to pay double restitution. If he confessed himself he pays the value, and a fifth, and a reparation sacrifice.” But here when he moved it by claiming that it was lost. Afterwards he claimed a claim of...
thief and is not liable. Explain it that he swore to him but slaughtered it afterwards. The students of Rebbi Hyya bar Julianus say, explain it that he slaughtered it when it was lying down. Is there slaughter without sale? Following Symmachos who said, there can be slaughter and sale without theft. Samuel said, if there came no witnesses of the theft, but there came witnesses of the slaughter; he is liable.

100 A person who finds a lost object with distinguishing marks by which the owner can convincingly describe it is obligated to return it to its owner (Deut. 22:1-3); by picking it up he automatically becomes an unpaid keeper. If the owner hears that the object was found by that person and comes to reclaim it, if the finder had honestly told him that he lost it again he would not be liable since he was an unpaid keeper. But if he falsely claimed that it was stolen, he is liable for double restitution required for any false claim of theft (Ex. 22:8).

101 “Grabbing” is mentioned in Ex. 22:7 regarding court procedures involving an oath for an unpaid keeper who falsely claims that the object was stolen and has to pay double restitution. It also is mentioned in v. 10 regarding the paid keeper who for an actually stolen object has to pay its value (v. 11) but double restitution for a false claim of theft for which he swore falsely.

102 Babli Bava qamma 107b. Since he discharged his obligations towards the owner by his oath, the second claim is irrelevant.

103 If he swears for the second claim (truly or falsely), is this a blurted oath in the meaning of Lev. 5:4?

104 How can he say he is not liable and then make him liable for a blurted oath?

105 He is not liable for an oath about a deposit; this implies nothing for the rules of blurted oaths.

106 The previous answer is incorrect. He saw that the answer is simple: since the second oath is not required it would be a blurted oath if true and a false oath if false, sinful in any case.

107 Babli Bava qamma 106b/107a. He notes that Ex. 22:8 in general is read as applying to court proceedings (6:1 Note 1, Bava mesi`a 1:1 Note 9) expressing the general conditions when an oath can be imposed. Therefore the double restitution imposed at the end of the verse has to be in such a proceeding, and double restitution imposed on the paid keeper or renter is imposed on the same basis by the argument of Note 101.

108 By court order.

109 Before there was any court proceeding. This oath does not protect him from having to swear another oath imposed by the court; therefore it does not trigger double restitution.

110 Babli Bava qamma 107b.

111 What kind of testimony will make him pay double restitution? Since he is a keeper and the animal was delivered to him, it needs an act of acquisition to be stolen and then this has to be classified as robbery, rather than as theft. If the animal was standing at a feeding trough on his property,
there it belongs. If he claims that it was stolen, he is liable for double restitution. If he took it as his property, he is a robber, the animal is his property, he has to pay for it, but any oath will be irrelevant since it would not be about the other’s property. But if the formulation was “even if it was standing at his feeding trough” then it would apply even if he took it by robbery. (Rashi in Bava qamma.)

112 Whether he took the animal before he swore or after.
113 For his false oath.
114 For double restitution, since by the oath and payment he acquired the animal and the second claim is baseless; cf. Note 102.
115 He did not move it but acquired it by the oath as if he had moved it after buying.
116 When he already had acquired the animal by his oath.
117 He was an honest keeper beforehand; the animal was still its owner’s property. He did not move the animal with the intent of appropriating it; the animal was acquired by slaughter. This argument presupposes that quadruple or quintuple restitution applies only for slaughter or sale after theft.
118 It should read: “Is there restitution for slaughter without prior theft”?
119 He holds that quadruple or quintuple restitution is independent of restitution for theft; theft has not to be proven, only illegal slaughter. In the Babli (Bava qamma 75b) he states that if there were witnesses for the theft whose testimony stood up and witnesses for slaughter or sale which were found perjured, the accused has to pay double restitution for theft and the perjurers double or triple restitution for the false accusation, showing that slaughter or sale can be separated from theft. (The thief of cattle who sells his booty has to pay five times, not seven.)
120 He holds that while quadruple or quintuple restitution applies only to stolen animals, the theft has not to be proven in court if there are witnesses for illegal slaughter.

Rebbi Simeon ben Laqish said, if he saw that witnesses to the theft were approaching and he said “I stole,” since his confession is inoperative he is not liable. If he saw that witnesses to the slaughter were approaching and he said “I slaughtered,” since his confession is (another opinion: not) operative he is not liable (another opinion: is liable). Rebbi Ze’ira asked: that witnesses to rape were approaching and he said “I raped”? Rebbi
Hanina said, the Mishnah follows Rebbi Simeon who said the main claim is for the fine. Therefore his confession is inoperative and he is not liable. But the rabbis say, the main claim is not for the fine. Therefore his confession is operative and he is liable.

In this entire paragraph, “liable” has to be replaced by “not liable” and vice versa.

The principle that a confession frees a person from a fine is valid only if the confession preceded the appearance of witnesses since witnesses make his confession unnecessary. If the thief waits until the injured party has found witnesses he has to pay double restitution: the value of the object which he took as a debt and the double as a fine.

Copyist’s notes; the copyist’s correction of the incorrect text from which he copied.

It is assumed that the witnesses have no knowledge about how he acquired the animal which he slaughtered; he could have bought it from the owner or from a thief. The person who bought from the thief cannot be sued for multiple restitution. Therefore his confession is as irrelevant as is the witnesses’ testimony; there is no place for any liability. If he also admits to having stolen the animal he liquidates his debt by paying its value.

For the rabbis the main claim of the father of an underage rape victim is for the diminution of his daughter’s chances on the marriage market; this is a claim for damages, not a fine, and in this respect “the admission of the debtor is worth 100 witnesses.”

It was stated: If it was neither to his benefit nor to his detriment, he is liable. Rebbi said, a baraita says so: “If he said to the borrower, the unpaid trustee, the recipient of a fee, or the renter, ‘where is my ox?’ This one said, ‘it died.'”

May he tell him, “come and swear to me that you never thought of rustling it?” In any case he would not pay; what could he say? “Even if you would pay me a lot, I want from you what is mine.”

There is a baraita which disagrees with the Mishnah and holds that a false oath is a false oath even if the false formulation does no harm to the other party.
127 Tosephta 6:7 starts in this way; but the baraita must have the person who swore falsely not to the detriment of the depositor as liable to the penalties of a false oath.

128 Could the depositor ask that the paid trustee or renter, or even the borrower, who paid for the lost or stolen object, nevertheless swear that they do not hold the object in their possession? The first argument is against, for the oath will not change the monetary situation. The second argument is in favor; there is a value to one’s own possession which cannot be expressed in monetary terms. The answer is not given, nor is the question raised in the Babli. In the absence of guidance, a court cannot act.
Introduction to Tractate Avodah Zarah

The topic of the Tractate “Pagan Worship” is that of social interaction of Jews with pagan surroundings, in particular the possibility of keeping a kosher food supply in a non-Jewish (not necessarily pagan) world. Pagan practice as a matter of Jewish criminal law was dealt with in Tractate Sanhedrin.

The First Chapter starts with the general principle that three days before a public pagan feast commercial intercourse with pagans is forbidden. This refers to intrinsically pagan rites, not simply to non-Jewish festivities. For private festivities of pagan character, only the day itself is forbidden. The remainder of the Chapter is devoted to a description of public festivities in the later pre-Christian Roman Empire and the attenuated practical implementation of the general rule. The later part of the Chapter contains rules designed to preserve the Jewish character of Palestine.

The Second Chapter, the center piece of the Tractate, is divided into two parts. The first part is a complement of the First Chapter, detailing what to be careful about in dealing with Gentiles, not necessarily pagans. The second part starts the main topic of the Tractate, keeping a kosher food supply in a Gentile world. In this respect, a characteristic feature of rabbinic-pharisaic Judaism is the treatment of Gentile wine. Since it was generally accepted in the Greco-Roman world that wine drunk at any festive occasion was first dedicated to the gods by a libation (which mostly was done by gently wiggling the full cup), rabbinic interpretation considers any pagan wine as dedicated and therefore biblically forbidden for all usufruct for Jews. We do not know what the position of non-rabbinic sects was in this respect; the rule of the Damascus Document (CD xii 10) that it is forbidden to sell any wine (as well as grain and animals) to Gentiles lest they be used in idolatrous ways illustrates strict adherence to the rules of Chapter One. On the other hand it is reported (in our Tractate, Chapter 5) that Samaritans did nor refrain from using Gentile wine; probably they forbade only wines actually used for pagan
rites. Since the latter were either drunk or spilled by the worshippers, they could not be objects of trade. It is reported that the final split between Jews and Samaritans, attributed to R. Abbahu at Caesarea, was essentially caused by the difference in treatment of Gentile wine. Rabbinic Judaism has continued to ban Gentile wine even though the pagan background of the ban has disappeared. While the topic of Gentile wine is introduced in the Chapter, with extended remarks about the dangers of wine which was left uncovered and unattended, the main emphasis is on food rather than wine.

Chapter Three discusses the prohibition to use vessels decorated with pagan symbols of worship; arguments are given why public buildings decorated with such symbols may still be used. The general rule that natural phenomena, such as mountain tops, and buildings or trees connected to the ground cannot become forbidden by pagan use leads to a discussion of what is permitted and what is forbidden in buildings used for idolatry and sacred groves.

The Fourth Chapter again has two parts. The first part continues the Third Chapter in a description of Hermes worship and the general topic on how to remove the pagan aspect from objects of pagan worship. The second part deals with wine-presses; either Jewish owned with pagan workers or Gentile owned used to produce kosher wine. How to make a Gentile wine-press fit for the production of kosher wine is treated towards the end of Chapter Five.

The Fifth and last Chapter is almost completely dedicated to topics connected with wine; either the prohibition of Gentile wine or the problems of handling kosher wine in a Gentile environment. The last Halakhah deals with a different topic: How to prepare Gentiles’ vessels for the preparation or use of kosher food (today called *kashering.*). The basis of the rules, both in their practical and their ritualistic aspects, is Num. 31:21-23.
Mishnah 1: Within three days before Gentile holidays one is forbidden to trade with them, to lend them and to borrow from them, to give them loans and to ask them for loans, to pay debts to them and to accept payment from them. Rebbi Jehudah says, one may accept payment from them because this hurts him. They told him, even though it hurts him now he will enjoy it later. Rebbi Ismael says, three days before and three days afterwards are forbidden but the Sages say, before their holidays it is forbidden, after their holidays it is permitted.

1 It is forbidden to buy from an idolator or repay one’s debt because this provides him with money for his idolatrous celebration. It is forbidden to sell to him because he will buy things for his celebration. One may not lend him vessels or animals for he will use them for his celebration. One may not borrow from him because this will make him feel important.

2 The feeling that he got rid of his debts will make his idolatrous celebration more happy.

Halakhah 1: “Within three days before Gentile holidays,” etc. Rebbi Hama bar Uqba understood all from here: Bring your sacrifices in the morning, on the third day your tithes. Rebbi Yose said to him, if it were so,
even in the diasporas. But it was stated⁴, Nahum the Mede said, in the diasporas one day is forbidden. What about this? There, they checked and found that they supplied their needs in one day and forbade them one day. But here⁵ they checked and found that they cover their needs in three days and forbade them three days.

3 Am. 4:4, speaking of the sinful service of the Golden Calf of Beth El.
4 Babli 7b, slightly differently Tosephta 1:1.
5 In Palestine. The expression usually means Babylonia; the plural does not imply that any of these restrictions were followed in Egypt or other parts of the Roman Empire.
How does Rebbi Yose uphold this verse, *bring your sacrifices in the morning*, etc⁶? The verse speaks about Jeroboam’s kingdom. When Jeroboam became king over Israel he started seducing Israel and said to them come, let us worship pagan worship. Pagan worship is lenient. This is what is written, *let us go against Jehudah, cut it down, break it up, and appoint a king in it, the man from Tabeal*.⁷ Rebbi Abba said, we checked all of Scripture but did not find a place named Tabeal. But it treats its worshippers well. The Torah said, *selected him from all of the tribes of Israel to be a priest for Me⁸*. Pagan worship says, *he made priests from the fringes of the people⁹*. Rebbi La said, from the thorns of the people, the rubbish of the people. The Torah said, *the fat of My sacrifice shall not remain until the morning¹⁰*, but pagan worship said, *bring your sacrifices in the morning¹⁰*. The Torah said, *it should be eaten on the day of its slaughter and the next day¹¹*, but pagan worship said, *on the third day your tithes³*. The Torah said, *do not sacrifice the blood of My sacrifice on leavened matter¹⁰*; but pagan worship said, *and burn your thanksgiving offer of leavened matter³*. The Torah said, *if you are vowing a vow to the Eternal, your God, do not tarry to fulfill it¹²*, but pagan worship said, *pledge gifts, publicize them³¹³*. Rebbi Yudan, Rebbi Mattaniah’s father, said, the verse only serves to mention the shame of Israel. *The day of our king, the princes are sick from wine’s heat, he draws the mockers by his hand¹⁴*. On the day when Jeroboam
became king over Israel, all of Israel came to him late in the evening and told him, come and worship pagan worship. He told them, it is late in the evening; I am drunk and not drunk. Everybody is drinking; but if you wish, go and come in the morning. That is what is written, for their heart is like an oven while they are lying in ambush; all night long their baker is sleeping. All night long their baker did not sleep. In the morning he is burning like fire of a conflagration. In the morning they came to him. He told them, I do understand what you want but I am afraid of your Synhedrion lest they kill me. They told him, we shall kill them; this is what is written, that all are glowing like an oven and eat their judges. Rebbi Levi said, they killed them, as is written, if a corpse is found. Rebbi La said, they deposed them; The day of our king, the princes are profaned from wine’s heat, the day when princes were profaned. From wine’s heat, they were addicted to wine. He draws the mockers by his hand: When he saw a serious person he placed two scoffers next to him who asked him, which generation was preferred over all generations? He told them, the generation of the Exodus. But did they not practice pagan worship? He answered them, because they were beloved they were not punished. But they told him, be quiet for the king wants to do the same. Not only that, but they made one and this one made two. He put the one up at Bethel; the other he gave to Dan.

The haughtiness of Jeroboam damned him absolutely. Rebbi Yose ben Jacob said, Jeroboam became king at the end of a Sabbatical year. This refers to what is written, at the end of seven years, at the time of the Sabbatical year, on the festival of Tabernacles, when all of Israel comes to appear before the Eternal, your God, at the place which He shall choose, you shall read this Torah in the presence of all of Israel to their ears. He said, if I am asked to read, I have to stand. They will say, the local king has precedence. But if I am reading as second, it is a shame for me. If I do not read, it is a disgrace for me. And if I let them go, they will ascend and desert me. They will go to Rehabeam, Solomon’s son. This is what is written: If this people would go up to sacrifice in the Temple in Jerusalem will this people’s heart return to their master, to Rehabeam. What did he do? He made two golden calves and wrote on their hearts, “they will kill you.” He said, any king who will succeed
me will look at them. Rebbi Ḥuna said, *companions of ingenious conjurations*. Anybody who joined with him he will make a co-conspirator. Rebbi Huna said, *a slaughtering place deepened by seducers*, for he deepened in crime. He said, anybody, I shall kill anybody who makes this public.

6 Since for him the Mishnah has no biblical basis; the cessation of commerce with idolators either is rabbinic or an old popular custom. The entire sermon is reproduced in *Yalqut Šim’oni Prophets* §542.

7 *Is. 7:6.* The tradition that Tabeal is a place rather than a personal name was accepted by the Medieval commentators of Prophets. According to Rashi the name is coded; one has to replace letter $n$ by $n +/-1$; then שַאֲבִיל מִשָּׁה becomes **שַאֲבִיל מִשָּׁה**, a city founded after the Arab conquest.

8 *Is. 2:28.*

9 *1K. 12:31;* quoted in the Babli, *Qiddushin* 75b, in the name of R. Johanan.

10 *Lev. 19:6.*

11 *Deut. 23:22.*

12 But it is not necessary to fulfill one’s pledge. The reason of the Northern Kingdom's apostasy is traced to the cost and onerous rules of Torah practice.

13 *Hos. 4:5.*

14 He claimed that his mental faculties were slightly impaired.

15 *Hos. 4:6.*

16 *Hos. 4:7.* All of Talmudic literature assumes that the legal system imagined for late Hasmonean rule was that of the Davidic kingdom.

17 *Deut. 21:1.* This sermon derives from **יֶלֶשׁ יֶלֶשׁ** in *Hos. 4:5* not from **יהלָל** “to be sick” but from **יהלָל** “to be perforated”.

18 Deriving **יֶלֶשׁ יֶלֶשׁ** in *Hos. 4:5* from **יהלָל** “to be profane”.

19 *1K. 12:29.*

20 Jeroboam is the only person of those mentioned in Mishnah *Sanhedrin* 11:2 as having no part in the Future World who is not rehabilitated in the Yerushalmi Halakhah. The following argument is reproduced in Babli *Sanhedrin* 101b.

21 *Deut. 31:11.*

22 By tradition, on this occasion it is the king who has to read selected portions (Mishnah *Sotah* 6:7). It is presumed that the same was true for the First Temple. There is no provision that two kings could read alternate portions, or if they did, the local king certainly would have precedence. The assertion of the book of Kings that there was a perpetual state of war between the Northern and the Southern kingdoms in the time of Jeroboam (*1K. 15:6*) is interpreted as a war of words conducted in the House of Study.

Another tradition (mentioned frequently but not undisputed) holds that nobody is allowed to sit in the Temple but a Davidic king (*Pesahim* 5:10, *Yoma* 3:2, *Sotah* 7:7; Babli *Sanhedrin* 101b, *Sotah* 40a,41a, *Yoma* 25a, *Qiddushin* 78a, *Tamid* 27a). If Yeroboam would have to stand while Rehabeam was sitting, an impossible situation would be created.
24 Letting the people go to Jerusalem while he remains at Sichem would emphasize the legitimacy of Rehabeam’s rule.
27 *Ps.* 58:6.
28 Correctly reading the first verb in the verse from the root meaning “to connect” but the second from the homonym meaning “to conjure, to practice sorcery.” Since all kings of Israel adopted his institution of official worship at Bethel as long as that place existed, they became his co-conspirators.
29 *Hos.* 5:2.
30 The reason for the worship of the calves was never made public. Therefore, the sin was the king’s only.

Rebbi Abin bar Cahana said, we find that Jeroboam also invented Sabbaths and holidays. That is what is written*:* *Jeroboam made the holiday in the eighth month, on the fifteenth of the month, like the holiday in Jehudah, and went on the altar; so did he at Bethel to sacrifice . . . in the month which he invented.* “In addition to” is written*:* *in addition to the Sabbaths of the Eternal.*

31 *IK.* 12:32-33.
32 The *Qere* is מִכְלֶם “by his invention”; the *Ketib* is מִכְלֶם “in addition” (or “except”). This is read to mean that in addition to the holiday month which he invented, he invented something else. By comparing the expression used in *Lev.* 23:38, the “else” is found to be the Sabbath, justifying R. Abin bar Cahana’s statement. (Cf. *Num.* r. 21:23.)
It was stated:\footnote{33} If one transgressed and traded with him, it is permitted. Rebbi Jacob bar Aha, Rebbi Yose, in the name of Rebbi Johanan: Even on his holiday\footnote{34}. It was stated so:\footnote{35} When was this said? About a Gentile whom he does not know. But with a Gentile of his acquaintance it is permitted since he is flattering him. It was stated: If one enters a town and finds them celebrating, he celebrates with them because he only is flattering them.

A ducenarius\footnote{36} honored Rebbi Jehudah the Prince\footnote{37} with a plate full of denarii. He took one of them and sent the remainder to him. He asked Rebbi Simeon ben Laqish who said, he shall bring the value to the Dead Sea\footnote{38}. But was he not an acquaintance and it was in the past? Rebbi Abbahu said, did not Rabban Gamliel ben Rebbi asked me, may one go to a fair\footnote{39}, and I forbade it to him, although it was stated:\footnote{40}: “one goes to fairs and buys there male and female slaves.” Rebbi Simeon ben Laqish said, not only Jewish slaves\footnote{41} but even Gentiles, because he brings them under the wings of the Shekhina\footnote{42}.

What about this? Rabban Gamliel was a minor personality and Rebbi Abbahu desired to confine him\footnote{43}. But Rebbi Judan the Prince was an important person and Rebbi Simeon ben Laqish wanted to limit the matter\footnote{44}.

\footnote{33} Babli 6b. While trade is forbidden, the proceeds of an illegal trade are not.
\footnote{34} Disputed by the Babli 6b, Tosephta 1:9.
\footnote{35} Quoted in Tosaphot 2a, s.v. נסר.
\footnote{36} Latin, “referring to 200”. If this describes an administrator, the reference is to an official such a prefect, procurator, receiving a salary of 200 sestertia (2'000 gold denarii), if a soldier, a commander of 200 men.
\footnote{37} The grandson of Rebbi.
\footnote{38} “Bringing something to the Dead Sea” means destroying it, since the Dead Sea corrodes and destroys all metal thrown into it. Babli 6b.
\footnote{39} This refers only to fairs which are in honor of some divinity. There is no limit to visits to government-organized fairs (Tosephta 1:7).
\footnote{40} Tosephta 1:8; Babli 13a.
\footnote{41} Circumcised slaves who were property of another Jew. This cannot refer to Jews sold as slaves since it is very meritorious to redeem Jews from slavery and does not need special permission.
\footnote{42} The Divine Presence. Since the slave becomes a semi-Jew, in the words of the
Babli (13b) buying Gentile slaves “diminishes the number of idolators in the world.”

43 R. Abbahu did not want to abrogate the general permission for a meritorious intent to visit fairs dedicated to pagan divinities; he only thought that a public personality who probably would be unable to define the limits between permitted and forbidden intent should not give a bad example to the people.

44 While trade is permitted, accepting gifts distributed by a pagan on his holiday essentially is forbidden even though the gift should be accepted to improve inter-communal peace.

One understands “to lend;” “to borrow” from them? Because he increases his reputation. One understands “to give them loans;” “to ask them for loans”? Because he increases his reputation. One understands “to pay debts to them;” “to accept payment from them”? That he should not say, his pagan worship had helped him. 45 Rebbi Abba bar Tevelai in the name of Rav: If it was a loan in danger of being lost it is permitted. It was stated thus: A loan in danger of being lost, by witnesses. A loan not in danger of being lost, by document. 46 Even a loan by document is in danger of being lost, for not at all times does a person succeed in liquidating his debt. 47 How is this? A loan not in danger of being lost, by pledge. A loan in danger of being lost, not by pledge. It was found following the former [opinion]: A loan in danger of being lost, by witnesses. A loan not in danger of being lost, by document.

45 Babli 6b.
46 Babli Bava gamma 102a.
There, we have stated⁴⁸: “Rebbi Jehudah says, a woman should not apply lime because it disfigures her⁴⁹.” Rebbi Hanina and Rebbi Mana. One said, they disagreed about lime which she removed on the holiday, but lime which she removes after the holiday is forbidden⁵⁰. But the other says, they disagreed about lime which she removes after the holiday. But lime which she removes during the holiday is permitted. We did not know who said what. From what R. Hanina, Rebbi Yose said in the name of Rebbi Johanan, Rebbi Jehudah is consistent. Just as Rebbi Jehudah said there, temporary disfiguration is disfiguration, so he says here⁵¹, temporary pain is pain. This implies that they disagreed about lime which she removed on the holiday, but lime which she removes after the holiday is forbidden⁵².

⁴⁹ On the semi-holidays which are the intermediate days of the Passover and Tabernacles holidays, one should not do what one can do before the holiday. Therefore one cannot get a haircut on the holidays and men cannot trim their beards. Rebbi Jehudah holds that a woman cannot get a beauty treatment in the form of a face mask of lime which will remove all facial hair and will make her cheeks more red by increased blood circulation. Since his name is attached to this prohibition while the others are stated anonymously it follows that the majority of the Sages hold that a woman can get such a treatment at any time.

It would seem that one should write לֶאֶל as pi‘el but since the Babli consistently has לֶאֶל they must have heard the Galileans pronounce the word with a soft ă (which does not exclude that Galilean ă also was pronounced ą; cf. Berakhot 2:4 Note 167.)

⁵⁰ Even for the Sages. While it is forbidden to marry on a holiday since the joy of holidays should not be mixed with the joy of marriage, a girl certainly can get engaged to be married on a holiday. The beauty treatment described was applied mainly to single girls to make them more marriageable. A treatment which terminates only after the holiday is a misuse of holiday time.

⁵¹ In our Mishnah where he holds that the temporary pain the Gentile feels when repaying his debt is sufficient to wave the prohibition of commerce.

⁵² This therefore is not only R. Hanina’s opinion but stated practice.
A similar text in Tosephta 1:3.

The Jewish agricultural worker cannot harvest for the Gentile’s celebration of his holiday. The Tosephta text reads differently: The Jewish worker cannot work if he is paid by the day but the craftsman who is paid as contractor can do anything he wants in his own house. In a similar statement (Šabbat 1, 4a l. 58) R. Simeon ben Eleazar holds that a Gentile contractor can work on a Jew’s contract in his house on the Sabbath, but not in the Jew’s house nor if he is paid for his time on the Sabbath.

There is no statement of R. Simeon ben Eleazar in the relevant Chapters of Yerushalmi Mo‘ed qatan. According to Nachmanides (Milhamot Hashem ad Alfasi Mo‘ed qatan §1232) it refers to the baraita in the Babli Mo‘ed qatan 26b where R. Simeon ben Eleazar forbids invisible mending of garments torn at the news of the death of a close relative.
The colleagues say, the reason of Rebbi Ismael is because of the holiday’s son. Rebbi Abba said, because he knows that it is forbidden to you to trade with him, he reduces the enjoyment of his holiday. What is the difference between them? To sell them things which do not keep. In the opinion of the colleagues it is forbidden. In the opinion of Rebbi Abba it is allowed.

Rebbi Yudan said, a verse supports what the colleagues said. On the twenty-fourth day of the seventh month the sons of Israel assembled in fasting, and crying, and in sackcloth, and dirt on them. Why does it not say, on the twenty-third? Because of the holiday’s son. If you want to say because that was on a Sabbath, you cannot do this, because then the Great Fast would have been on a Sunday. And what about this? Does not Rebbi Onias make light of him who would move it from its place? Rebbi Johanan ben Madia said, I computed it and it was not on a Sabbath.

56 The day after the holiday which in Jewish custom is a day where mourning and fasting are forbidden. It is presumed that Gentiles follow a similar custom.
57 This assumes that Jews are dominant in trade. If the Gentile cannot replenish his stock after the holiday, he will use it sparingly and thereby refrain from any exuberant celebration.
58 In the opinion of the colleagues all commerce is forbidden on the day following a holiday. In the opinion of R. Abba (in the Babli 6b R. Simeon ben Laqish supported by a baraita) one may sell perishable items on that day since the Gentile could not have bought them before and their availability will not influence the Gentile’s behavior on his holiday.
59 Neh. 9:1. Words not appearing in MT are underlined.
60 In the Seventh month, the first is New Year’s Day, the tenth is the Day of Atonement, and days 15-22 are Tabernacles. Nehemiah refrained from calling a fast day on the day after the holiday; this dates the observance of the “holiday’s son” at least to Nehemiah, unless it was impossible to call a fast day because the 23rd was a Sabbath. But then the 15th and the 1st would have been Fridays and the day of Atonement a Sunday. Since it is assumed that Nehemiah followed rabbinic rules one also assumes that as head of the rabbinic establishment of his time he would have manipulated the calendar to avoid this situation when one could not cook for a big meal before the fast (as the rabbinic calendar also is manipulated to avoid the fast on a Friday when one could not cook for breaking the fast.) (A similar argument is rejected by Tosafoth in Rosh Haššanah 19b s. v. יומ טוב; one must assume that the author was ignorant of this paragraph in the Yerushalmi.)
61 An Amora of the first generation; in Halakhah 3:1 he is called R. Hanina from Hauran. He was a member of the committee
of the Academy of Tiberias which fixed the calendar after Rebbi’s death and opposed all manipulations not justified by astronomical facts.

Mishnah 2: The following are the holidays of the Gentiles: Calendae, Saturnalia, and Cratesis, and the king’s birthday, and birthday, and the day of death, the words of Rebbi Meïr. But the Sages say, any death for which there is burning is idolatrous; if there is no burning it is not idolatrous.

62 The first day of the month; used here only for the first day of the year, the first of January.
63 The year-end licentious festivities in Rome.
64 Greek крάτης, “might, power, accession to Empire”. Observed on the first of August, the day of capture of Alexandria by Augustus.
65 This is the Yerushalmi explanation. In the Babi, the day of accession.
66 Personal holidays of private persons.
67 Of ancestors.
68 Burning the personal belongings of the deceased.

Halakhah 2: “The following are the holidays of the Gentiles,” etc. Rav said ‘edehen and Samuel said ‘edehen. He who said ‘edehen, they are their witnesses. He who said ‘edehen, for the day of their misfortune is near. Rav said me’abberim, and Samuel said me’abberin. He who said me’abberin, one adds a limb to it. He who said me’abberin, like a pregnant woman. Rav said ye’utu, and Samuel said, ye’utu. He who said ye’utu, but with this we shall be agreeable to you. He who said ye’utu, to know, to inform the weary of wisdom.
A reformulated parallel is in Berakhot 8:7, Notes 157-160.

Is. 44:9.

Deut. 32:35.

The technical term for intercalation in the calendar, adding a month.

Gen. 34:15.

Is. 50:4.

Rav said, Adam, the first man, instituted Calendas. When he saw that the night was getting longer, he said, woe to me, maybe this is what is written for, he shall smite your head, you will sneak to his heel, maybe it will come to bite me. I said, but darkness will smite me. When he saw that days were getting longer, he said calendas, καλόν dies. This follows him who said that the world was created in Tishre. But following him who said that the world was created in Nisan, he would have known. Rebbi Yose ben Rebbi Abun said, who thinks that the world was created in Tishre? Rav! As we have stated in the composition for shofar blowing from the House of Rav: “This is the day of the beginning of Your works, a remembrance of the first day.” This implies that the world was created on New Year’s Day.

Babli 8a.

Gen. 3:15.

Ps. 139.11. Psalm 139, ascribed in the book of Psalms to David, is in aggadic tradition at least partially ascribed to Adam (cf. Midrash Tehillim, Ps. 139, the author’s The Scholar’s Haggadah p. 220).

“A beautiful day,” mixed Greek (καλόν “beautiful”, accusative) and Latin (dies “day”, nominative) perhaps to indicate the popular language of the unlettered.

This is the opinion of R. Eliezer. R. Joshua holds that the world was created on the 15th of Nisan. Cf. Babli Roš Haššanah 27a and the author’s Seder Olam (Northvale NJ 1998) pp. 47-48 (Note 3).

Rav’s composition for the extended musaf prayer on New Year’s Day. The sentence is found in the middle section.
Rebbi Johanan does not say so, but the empire of Egypt and the empire of Rome were fighting with one another. They said, how long are we killing one another in this war? Let us institute the rule that the empire should be preeminent which will tell its army commander, fall on your sword, and he will obey. The Egyptian did not obey. In Rome there was an old man by the name of Janarius who had twelve sons. They told him, if you obey us we shall make your sons dukes, eparchoi, and generals. He listened to them. Therefore, it is called Calendarae Januarii. The next day they mourn him, a black day. Rebbi Yudan from Antodra said, if one sows lentils on that day, they will not succeed.

82 Greek πόλεμος. postridiani, following calendae, ides, or nonae, were considered inauspicious.
83 Latin dux, pl. duces.
84 Greek ἐπαρχὸς “governor, prefect.”
85 Greek στρατηλάτης.
86 Greek μέλανα ἡμέρα, translation of Latin dies ater, a black (unlucky) day. Dies 87a A symbol of mourning, Gen. rabba 63(19).

Rav said, Calendarae are forbidden for everybody. Rebbi Johanan said, it is forbidden only for those worshipping on them. Saturnalia are forbidden for
everybody. Rebbi Johanan said, both Calendae and Saturnalia are forbidden only for those worshipping on them.

The colleagues asked: are wives of worshippers like worshippers? Rebbi Abbahu asked: is the parade of Caesarea like worship, since it is full of Samaritans? The parade of Duqim is questionable. Rebbi Ze‘ira sent Rebbi Bevai that he should buy him a small web from the Saturnalia of Bet-Shean. He came to Rebbi Yose. He thought that he would instruct him following Rebbi Joshua ben Levi who permitted it. But he instructed him following Rebbi Johanan that it was forbidden.

Rav said, Calends are eight days before the solstice, Saturnalia eight days after the solstice. Rebbi Johanan said, *prwqtw* is the head of the turning point.

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88 In the Babli, 8a, the opinions attributed here to the Babylonian Rav are quoted in the name of the Galilean R. Joshua ben Levi.

89 This also is opinion of Rav/R. Joshua ben Levi.

90 This seems to have been a military parade which may have involved the display of the legion’s eagles, considered an idolatrous practice. The participation of Samaritans may have removed the pagan aspect.

90a An unidentified place.

91 One has to read Yasa (Assi), the teacher of R. Ze‘ira, not Yose, his student’s student.

92 Clearly, one has to switch “permitted” and “forbidden” since the preceding (and Note 88) shows that R. Joshua ben Levi forbade what R. Johanan allowed.

93 Here “before” and “after” have to be switched; the statement is correct in the Babli, 8a. The Calends of January are 9 to 10 days after the winter solstice.

94 The dictionaries follow Musaphia in reading *tropic* for *procto*, meaning that when the sun is standing over the tropic this is the time of the solstice. It is difficult to accept a double metathesis, and the sun being over one of the tropics is not a beginning of the solstice; it is the solstice. Also רabıּקִק (“turning point”) denotes any one of the four cardinal points of the ecliptic, both solstices and both equinoxes. S. Krauss is correct in rejecting Musaphia’s explanation but his own, by a non-existing Greek word, is no better. Cf. Latin *proicitat* “it drew near”, said e.g. of the orbits of two stars. The earth is nearest to the sun at the summer solstice (E. G.). One would vocalize רֶהֶקְרִי.
Rebbi Abba in the name of Rav: There are three times in Babylonia, three times in Media. Three times in Babylonia, the readings are for Persian year as connected to the winter solstice. In Arabic, the Accadic and Syriac name of the Month of Tevet (or Kislev and Tevet) which leads one also to identify the day as connected to the winter solstice. In the Babli (11b) the readings are for Persian festivals, ms. readings, more or less, most of the time for the Babli (11b) the readings are for Persian festivals, ms. readings, for the Babylonians, the meaning of "March" as in the Syrian Christian calendar. Today's Persian New Year is what is characterized here as Median.

95 Where one has to observe the Mishnah's restrictions on commerce with Gentiles.
96 These days have not been identified except for which is mehragan, a fall festival. In Responsen der Geonim (Harkavy), Berlin 1887, No. 46 (p. 22) the Gaon describes this as the solstices, still celebrated as a holiday in his time. Also in where one recognizes the root mehr "Mithra", the sun-god. In one recognizes kanun, the Accadic and Syriac name of the Month of Tevet (or Kislev and Tevet) which leads one also to identify the day as connected to the winter solstice. In the Babli (11b) the readings are for Persian festivals, ms. readings, for the meaning of "March" as in the Syrian Christian calendar. Today's Persian New Year is what is characterized here as Median.
“Saturnalia,” “hidden hatred; hating, taking revenge, preserving [hatred].” This is what you say, *Esau hated Jacob*.

Rebbi Isaac ben Rebbi Eleazar said, in Rome they call it “senate of Esau.”

“Cratesis.” The day when Rome took hold of the Empire. Was this not stated already? Rebbi Yose ben Rebbi Abun said, for the second time.

Rebbi Levi said, on the day when Solomon married the daughter of Pharaoh Necho, the king of Egypt, Michael descended and put a stick into the Sea which attracted debris and formed a forest; that is the great fortification in Rome. On the day when Jeroboam put up two golden calves, Remus and Romulus built two sheds in Rome. On the day Eliahu disappeared a king was installed at Rome; *a king, there is no king appointed in Edom*.

"The king’s birthday." *It was on the third day, Pharao’s birthday*.

98 A proposed Hebrew etymology of “Saturnalia.”
99 *Gen. 27:41.*
100 In the second interpretation of *Calendae.*
101 When Augustus became Emperor to end the civil wars.
102 When Augustus became Emperor to end the civil wars.
103 *IK. 22:48.* The verse is quoted in incomplete form; in the biblical text is not a verb but a noun: *There was no king in Edom; a governor was king.* A shortened version is found in the Babli, *Sanhedrin 21b.*
104 *Gen. 40:20.*
105a *39c line 45* (39c line 45)

Your death, and the day of death. The preceding was for the public, from here on private. But it is written: *You shall die in peace, and what was burned for your earlier forefathers* . . . So is the Mishnah: “Any death where there is smoke and burning is idolatrous; if there is not smoke and burning it is not idolatrous.
104a. *Jer.* 34:5. Since God promises Sedekia that one will burn things at his funeral, the practice cannot be prohibited.

105 One burns not only the deceased’s utensils but adds some fuel which creates thick smoke. This is superstitious or idolatrous. The Babli, 11a, accepts burning as practice only for kings and Patriarchs, not for commoners.

**Mishnah 3:** The day of the first shaving of his beard and his locks, the day he arrived from a trip at sea, or the day he was freed from jail, are forbidden only on the day itself and for this man.

105 The religious shaving of the first beard is known from Roman sources (Petronius, *Satyricon* §29-8, where a golden box with the shavings of the master’s first beard stands in a niche with the lares and a statue of Venus.) According to Ravad, this is the sacrifice of locks that one grows for a year or two and then cuts as a religious rite.

106 Which always involved mortal danger.

**Halakhah 3:** “The day of the first shaving of his beard,” etc. What means “only on the day itself”; maybe the same day every year? Did we not state, his haircut and his son’s haircut is forbidden? Explain it that they had a haircut together. Did we not state, his wedding feast and his son’s wedding feast are forbidden? Explain it that they together had a haircut and married women. Did we not state, his birth and his son’s birth is forbidden? Could you say that they were born together? Explain it that he did not do it on his day, but after the son was born he did it with him.
107 The singular “it is forbidden” implies that this is a double festivity on the same day. Since it is quite impossible that a man and his son should shave their beards for the first time on the same day, it seems that the baraita implies that he celebrates the anniversary of his first shave every year and then shaves his son on that same date. The answer is that nothing in the baraita implies that one speaks of the first shaving of the beard; it could well be that the father lets his hair grow three years from the date of birth of his son and then cuts his and his son’s hair on the same day in one pagan rite.

108 A son and his widowed father may well marry on the same day.

109 Here it seems more reasonable to assume that a father celebrates his birthday every year and his son has the same birthday. But as with the other statements, it is not necessarily so. It either may be that the baraita does not refer to the birthdays of the persons but to birth of children to both of them; nor does it imply that the birthdates are identical; only the celebrations are. The problem is undecided; for practical purposes only the day itself is forbidden, not its date every following year.

110 He should not send him amphoras sold to the grocer because that is like claiming an unnecessary claim. One should not invite another knowing that he will not accept. He should not offer many gifts of closeness knowing that he does not want [them]. What is “of closeness”? He trusts another corner.

And in Jerusalem he was switching his ‘ikhla from right to left.

111 In Demay: “He knows that the other person expects that he would exert himself for him.”

112 The word עיקלה is otherwise unknown; cf. Demay loc. cit. Note 74. Compare Arabic عقال “cord (of a curtain)”.

110 A thoroughly corrupt paragraph; partially but defectively copied from Demay 4:6, Notes 73-74. The basic reference is Tosephta Baba gamma 7:8 which declares creating a false impression to obtain goodwill as “stealing minds” and forbidden. The example in the Tosephta reads: “he should not open for him amphoras sold to a grocer,” i.e., one should not give the guest the impression that one goes to great expense for him when in fact the amphora had to be opened anyhow to fulfill an existing sales contract. The text here does not make much sense. The next sentence is also in Demay (Babli Hulin 94a) and makes perfect sense.

111 In Demay: “He knows that the other person expects that he would exert himself for him.”
It was stated: In a town where Gentiles and Jews live together, if the Gentiles contribute the overseers of charity collect from them and from Jews, and provide for Gentile and Jewish poor, visit Gentile and Jewish sick, console Gentile and Jewish mourners, and bury Gentile and Jewish dead. Also one takes in vessels from Gentiles and Jews for the sake of peaceful coexistence. The weavers asked Rebbi Immi, what about a Gentile wedding feast? He wanted to permit it to them from this: “for the sake of peaceful coexistence.” Rebbi Abba told him, did not Rebbi Hiyya state that a Gentile wedding feast is forbidden? Rebbi Immi said, if it had not been for Rebbi Abba we would have come to permit their pagan worship; praise be the Omnipresent Who distanced us from them.

113 Demay 4:7, Notes 76-80; Tosephta Gittin 4:13-14; Babli Gittin 61a.
114 In a village or small town, if there is a pagan festival, or a fair dedicated to a pagan deity, which is celebrated by everybody there, the restrictions of trade spelled out in Mishnah 1 do apply in the town but not in its surroundings.

115 The place where trade with the Gentiles would be forbidden.

116 To trade there since they do not participate in the festivities.

HALAKHAH 4: “Outside a town with pagan worship,” etc. Therefore inside it is forbidden. Because in it there is one statue all of it should be forbidden? Rebbi Simeon ben Laqish says, they taught this about a fair. What is the difference between inside and the surroundings? Inside where it profits from the toll it is forbidden. Outside it is permitted because it does not profit from the toll, but if outside it also profits from the toll it is forbidden. But was it not stated: “One goes to fairs and buys there slaves, slave girls, and animals.” Rebbi Simeon ben Laqish said, not only Jewish slaves but even Gentiles, because he brings them under the wings of the Shekhina. But was it not stated: If he bought there a garment, it should be burned, an animal should be castrated, coins should be brought to the Dead Sea? One understands that a garment should be burned, coins should be brought to the Dead Sea. An animal should be castrated. But was it not stated: One goes to fairs and buys there slaves, slave girls, and animals.” Rebbi Simeon
ben Laqish said, not only Jewish slaves but even Gentiles, because he brings them under the wings of Heaven? Explain it, Israel, Israel. But was it not stated: If somebody sells his slave to Gentiles the proceeds are forbidden. Again explain it, Israel, Israel. One buys from an Israel who goes to a fair because he is like one salvaging from their hands. On his return it is forbidden since he profits from pagan worship. But from Gentiles it is permitted whether they are going or coming. Rebbi Abba the son of Rebbi Hyya bar Abba in the name of Rebbi Johanan: If it was a hostelry it is permitted. Rebbi Ze’ira asked: at a fair it is forbidden, in a hostelry it is permitted? Maybe Rebbi Johanan said this about merchandise. Rebbi Abba the son of Rebbi Hyya bar Abba came in the name of Rebbi Johanan: If it was a hostelry, merchandise is permitted, said Rebbi Johanan.

117 The fair is a once yearly affair in honor of some divinity and its temple receives a fee from every transaction at the fair. Trading at the fair is directly subsidizing pagan worship. Babli 11b.

118 Babli 13a.

119 The statement is unacceptable first because it contradicts the Tosephta and second because there is a biblical prohibition to castrate any animal (Lev. 22:24). The Babli 13a explains “castrating” as “making unfit for agricultural work” similar to the meaning of the root עפר “to starve an animal” in Arabic.

120 He bought from a Jew who was a vendor at the fair. This shows that only the strictly religious persons followed the rules on trade with Gentiles.

121 The Babli (Gittin 45a) requires the communal court to force the seller to buy the slave back for up to 10 times the sale price. It is forbidden to sell a circumcised slave, who has to keep the Sabbath and eat kosher, to a Gentile. On the other hand, a slave who refuses to be circumcised and become a semi-Jew may be sold to Gentiles without penalty.

122 Babli 33a, Tosephta 1:15.

123 Greek πνεῦματος, πνεῦματος. Since the hostelry is a place for strangers, even at the time of a fair it is exempt of the rules restricting participation of Jews.

124 Greek πραγματεία.

125 The Babli 13a,b explains that any kind of merchandise one may buy there if no fee is paid to the organizers of the fair.

126 This clause is superfluous but this is not sufficient reason to delete it from the text.

(39d line 7) רבי אבא בר אבא בר יוסי: חתילה בתמה ובعقلנה זרה אסורה. רבי חוסי בר שמעי: אילו השמהו לו לא אסורה. מפי שמעיה בתמה ובعقلנה זרה אסורה. דילי אמר ברכמסיא
Rebbi Abbahu in the name of Rebbi Johanan: If one bartered an animal for an idol it becomes forbidden. Rav Hisda asked: If he had worshipped it he would not have made it forbidden. Because he bartered an animal for an idol he made it forbidden? Maybe it was said about merchandise assembled before the fair. There came Rebbi Ze’ira, Rebbi Abbahu in the name of Rebbi Johanan: If one bartered an animal for an idol it becomes forbidden. This was said about merchandise assembled before the fair.

Rebbi Abbahu said, it is forbidden to make a group visit to a fair, as we have stated. “One should not greet him at a place where it gives him prestige. If he meets him on his way, he greets him gravely.”

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127 Animals used in pagan worship are forbidden as sacrifices (Mishnah Temurah 6:1), but living things cannot become forbidden for all use. Why should barter make the living animal forbidden?

128 It is forbidden to give animals (or any other article which might be used in pagan worship) specifically for the purpose of assembling merchandise for sale at the pagan fair. The proceeds would be forbidden as the money of a Jew returning from dealing at the fair.

129 As stated in the following Tosephta, it is forbidden to greet a celebrant of a pagan rite in public where it increases his prestige on the day of his celebration. Since a group constitutes a public, a person meeting a Gentile of his acquaintance would automatically violate this prohibition.

130 Tosephta 1:2.
Rebbi Hiyya bar Abba sent to buy sandals for himself at the fair of Tyre. Rebbi Jacob bar Aha said to him, are you a buyer at fairs? He answered him, did you never buy a loaf of bread? He said to him, there is a difference, since Rebbi Johanan said, they did not forbid the necessities of life. Rebbi Simeon ben Johanan sent to ask Rebbi Simeon ben Josadaq, did you not check out the nature of the fair at Tyre? He told him, yes. He gave two pounds of peppers to an. He went and found an inscription there, “I, King Diocletian, settled this fair at Tyre to the genius of my brother Heraklius, eight days.”

Rebbi Isaac bar Nahman asked Rebbi Hanina: What is the nature of the fair at Gaza? He said to him, did you ever go to Tyre and see a Jew and a Gentile sharing a pot, and he does not worry that the Gentile pour something into the pot? This is difficult. He asked him; what did he answer him? But since Rebbi Hanina never said something that he had not heard, for that reason when he asked him this he responded with that.

Rebbi Yose ben Rebbi Abun came, Abba bar bar Hana in the name of Rebbi Johanan: They forbade only the fair at Botnah, as it was stated thus: There are three fairs, the fair at Gaza, the fair at Acco, the fair at Botnah. The clearest of them is the fair at Botnah.

131 The head of the Academy should not be violating rabbinic decrees; Babli 13b.
132 Greek κολλησ.
133 Cf. Sevuot 6:3, Note 34.
134 An unexplained word. The proposed etymologies by Perles (scrinarius, a document keeper), Levy (a small oven), and Kohut (Persian eskodar, a courier) are unsatisfactory.
135 Title given by Diocletian Jovius to his co-emperor Maximian. As a government sponsored fair, it should be permitted (Tosephta 1:7); the dedication to the genie of an Emperor would not make it prohibited since no pagan temple would profit from the sales.
136 Babli 11b/12a.
137 Identified by Eusebius as the biblical town of Betjonim in the territory of the tribe of Gad.
138 As unquestionably pagan, organized for the benefit of pagan worship.
May one go there?" If he was a guest, it is forbidden; a town dweller is permitted. A caravan is permitted since caravans go everywhere.

How are they decorated? Rebbi Johanan said, with myrrh; Rebbi Simeon ben Laqish said, with any kind. In the opinion of Rebbi Johanan, all is forbidden; in the opinion of Rebbi Simeon ben Laqish only the addition is forbidden. How is this done? If he usually takes five boxes outside and he took ten. If you say as a decoration, it is forbidden. If you say as sales practice, it is permitted.

139 An Aramaic word formed from Greek ξένος “stranger.” The rule of the Mishnah was made for visitors.
140 As explained in Mishnah 3:6, real estate cannot become forbidden by being used for worship. A taxpayer of the place cannot be deprived by pagan worship of his right to use public roads.
141 Long distance travellers cannot be expected to know all local happenings; they may continue on their road.
142 Not necessarily with flowers.
143 Since only myrrh is used, any myrrh used as decoration of any store in town is forbidden as pagan offering, whether or not it was intended as such.
144 Greek πρόκασις, read prókasis for prókasis. If the store expects to do more business because of the fair but outside the fairgrounds, this is not pagan worship.

Mishnah 5: The following are forbidden to be sold to them: pine cones and white figs with their stalks, and incense, and white cocks.
Rebbi Jehudah says, it is permitted to sell a white cock among chickens; when it is alone he cuts one claw and sells it since one does not sacrifice defective ones in pagan worship. All other things are permitted if unspecified but forbidden if specified. Rebbi Meir says, it is also forbidden to sell good dates, and curved dates, and Nicolaos dates to Gentiles.

145 Greek στρόβιλος “cone”.
146 Cf. Demay 1:1, Note 5.
147 If the Gentile does not specify that he needs the objects for pagan worship.
148 Cf. Note 155.

Halakkah 5: “The following are forbidden.” Simeon bar Abba in the name of Rebbi Johanan: White figs with their stalks and pine cones with their attachments.

“And incense.” It was stated, if it was a bundle it is permitted. How many are a bundle? “Rebbi Jehudah ben Bathya said, there are no less than five

And incense.” It was stated, if it was a bundle it is permitted. How many are a bundle? “Rebbi Jehudah ben Bathya said, there are no less than five
kinds in a bundle of incense\textsuperscript{151}. If he was a pagan priest it is forbidden\textsuperscript{152}, a medical man is permitted, a trader is permitted. A suspect trader is forbidden.”

We have stated, “a white cock.” Rebbi Hiyya stated unspecified “a cock.” Our Mishnah needs the baraita of Rebbi Hiyya and the baraita of Rebbi Hiyya needs our Mishnah. If we had stated but Rebbi Hiyya had not stated, we would have said, only a white cock but an unspecified cock would be permitted even alone. Therefore the baraita of Rebbi Hiyya is needed. Or if Rebbi Hiyya had stated but we had not stated, we would have said, this is only for an unspecified cock, but a white cock even among chickens is forbidden. Therefore our Mishnah is necessary and the baraita of Rebbi Hiyya is necessary. “A chicken to sell,” one may sell him a white cock. “A white cock to sell,” we say by itself it is forbidden, among chickens it is permitted. Rebbi Abun bar Hiyya asked: If one saw chickens grazing on a garbage heap and a white cock among them and said, whose is it? Is it as if he specified\textsuperscript{153}?

If it had a defect. The verse says that they sacrifice defectives in pagan worship. \textit{If you present a blind one to be sacrificed, is there nothing bad}\textsuperscript{154}? This says that they sacrifice defectives in pagan worship.

“Rebbi Meïr says, it is also forbidden to sell good dates, and curved dates, and Nicolaos dates to Gentiles.” Rebbi Hama bar Uqba said, Caryots\textsuperscript{155}. Rebbi Eleazar ben Rebbi Yose said, it is a kind known as hasda. If somebody transgressed and sold? It will come similar to what Rebbi Eleazar said\textsuperscript{156}, if he transgressed and sold it is permitted, and here if he transgressed and sold it is permitted.

\textsuperscript{150} Which are needed to decorate the thyrsus in Dionysian rites. Babli 14a.
\textsuperscript{151} Babli 14a, Tosephta 1:21.
\textsuperscript{152} A Jew may not sell him any of the items specified in the Mishnah even if he does not specify that he needs it for pagan worship.
\textsuperscript{153} Since he showed interest in the white cock alone, even if later in negotiating for the sale he does not mention it. Cf. Babli 14a.
\textsuperscript{154} Malachi 1:8. If it had not been acceptable for the Gentiles, the Jews would not have thought of doing this.
\textsuperscript{155} Greek καρυῳδίς “nut shaped kind of dates,” Babli 14b. The word ṣāḥā “curved, bent”. The reading of
the Yerushalmi is preferable to that of the Babli and the independent Mishnah mss., which designates a plant or bush having nothing to do with date palms (*Peah* 2:1 Note 24).

156 Halakhah 7, end.

Mishnah 6: At a place where they used to sell small cattle to Gentiles one sells\(^{157}\), at a place where they used not to sell one does not sell; nobody should change this because of controversy\(^{158}\). Nowhere does one sell to them large animals, calves, and donkey foals, whole or damaged\(^{159}\). Rebbi Jehudah permits damaged ones; Ben Bathyra permits horses\(^{160}\).

157 At places where sheep and goats are not sacrificed in pagan rites.

158 Even if the situation changes one should not change old usage since this will destroy communal peace.

159 Cattle and donkeys were used as animals for work and beasts of burden. Belonging to Jews, these animals have a right to rest on the Sabbath. If they are sold to Gentiles, the seller deprives them of this right; depending on circumstances this might be counted as violation of the Sabbath by the seller. Calves and foals do not work but are raised for work.

160 In antiquity horses were used only for riding, not for work. Even if the horse is used for hunting, he holds that transporting live animals or birds is not a breach of biblical Sabbath law.

Mishnah and Halakhah are also in *Pesahim* 4:3 (ʼ) which partially survives in a Genizah text (ʼ) edited by L. Ginzberg, New York 1909. It is difficult to determine which text is original.
**Halakhah 6:** “At a place where they used to sell small cattle,” etc. But is it permitted to raise them? Rebbi Abba said, for example Mahir which is sixteen by sixteen mil. They wanted to say, he who said it is permitted to sell [says] it is permitted to raise. But he who says, it is forbidden to sell [says] it is forbidden to leave it alone. Rebbi Jonah, Rebbi Eleazar in the name of Rav: Even one who says it is permitted to sell it [says] it is forbidden to leave it alone. What is the difference between selling and leaving alone? When he sells it to him it becomes the Gentile’s animal. If he lets it be alone with him, it is the Jew’s animal and he is suspected about it.

161 Since it is forbidden to raise sheep and goats in the Land of Israel (Mishnah Bava qamma 7:10, Note 97), from where does one get them to sell them to a Gentile?

162 The Mishnah permits to raise goats and sheep in places unfit for agriculture. Mahir is described in Eccl. rabba 1(34) as situated in the domain of the tribe of Reuben in Transjordan, a country of sheep and goats (Nuim. 32:4). Mentioned also in Pesahim 5:3.

163 Read with Pesahim: “to leave alone”.

164 Gentiles are suspected of bestiality (Mishnah 2:1).

165 In the Babli, 14b/15a, this is R. Eleazar’s statement opposing Rav.

“...” Why? Because he eliminates the duty of shearing. Think of it, if it was a goat! Because he eliminates the duty of the first-born. Think of it, if it was a male! Because he eliminates the gifts. Then one should not sell wheat to them because he eliminates the duty of hallah; then one should not sell wine and oil to them because he eliminates the duty of benedictions.

166 The first shearing of sheep should be given to a Cohen, Deut. 18:4. But goats are not raised for wool and are included in the prohibition.

167 Which must be given to a Cohen, Deut. 15:19. But a male animal does not bear lambs and also is included in the prohibition.
168 The parts of the animal to be given to a Cohen, Deut. 18:3.
169 The gift to the Cohen from bread dough, Num. 15:20.
170 Which are pronounced before and after food, as described in the later Chapters of Tractate Berakhot.

The problem treated here is that in the next paragraph it is stated that one does not sell large animals to Gentiles because of problems with the laws of the Sabbath. Therefore one is inclined to say that the prohibitions of Mishnah 5 are because of pagan worship and those of Mishnah 6 because of Jewish worship. It is shown that this does not hold; the first part of Mishnah 6 is about pagan worship, about places where sheep or goats are sacrificed by pagans; only the second part is about Jewish matters.
name of the rabbis there: Sometimes he sells it on trial and returns it after three days, then it turns out that he did do work with the Jew’s animal\(^\text{175}\). Then on trial it should be forbidden, not on trial permitted. One is because of the other\(^\text{176}\).

If he transgressed and sold one fines him. Just as one fines for practice so one fines for custom. From where that one fines for custom? A person sold his camel to an Aramean\(^\text{177}\). The case came before Rebbi Simeon ben Laqish who fined him double\(^\text{178}\) to make him take back the camel. Rebbi Yose ben Rebbi Abun said, they fined the broker and called him son who brokers to Arameans\(^\text{179}\). Does Rebbi Simeon ben Laqish follow Rebbi Jehudah\(^\text{180}\)? As it was stated in the name of Rebbi Jehuda\(^\text{181}\): “If somebody buys an animal from a Gentile and it gave birth to a firstling, he buys it up to its worth and gives half of its worth to a Cohen. If it was given to him as contractor, he has to pay for up to ten times its worth and gives all of its worth to the Cohen. But the Sages say, since the finger of the Gentile in involved it is no longer liable as firstling\(^\text{182}\).” Rebbi Simeon ben Laqish is more than Rebbi Jehudah. What Rebbi Jehudah said because of the practice of firstlings; but what Rebbi Simeon ben Laqish said because of practice regarding a large animal\(^\text{183}\).

\(^{171}\) An erroneous copy from the first paragraph.

\(^{172}\) If the Gentile does work with the Jew’s animal on the Sabbath, it is a violation of the Sabbath by biblical standards.

\(^{173}\) It is clear that shearing a sheep on the Sabbath is a violation of biblical law (Mishnah Sabbath 7:2). The Yerushalmi holds that milking a goat also is a biblical prohibition. But giving the animal rest on the Sabbath is an obligation of the owner; he is liable even if another person does the work with his consent. But the Gentile who shears or milks the animal violates no prohibition; since the animal is passive the owner also does not violate any biblical statute.

\(^{174}\) A Babylonian who immigrated to Galilee in the generation after R. Immi the Galilean. In the Babli 15a he is called Rami ben Rebbi Yeva.

\(^{175}\) If the Gentile takes the animal on Friday and returns it on Sunday he will have worked with it on the Sabbath with the agreement of the Jew who it turns out still is the owner.

\(^{176}\) This is a rabbinic “fence around the law,” far from biblical prohibitions.

\(^{177}\) A Gentile. While “Gentile” is used to emphasize the pagan character of a person, “Aramean” simply characterizes him as Non-Jew.

\(^{178}\) Greek διπλή. In the Hebrew/Aramaic translation is used. In and the
Babli, *Bekhorot* 3a, he authorizes a fine up to ten times its price.

179 Translated following  a.

180 Could R. Simeon ben Laqish act against accepted practice in this case?

181 *Tosephta Bekhorot* 2:1, Babli *Bekhorot* 2b.

182 Undisputed practice follows the Sages, cf. Note 187.

183 The two cases have nothing in common.

“Rebbi Jehudah permits damaged ones.” Rebbi Jehudah said this only for a damaged one which cannot be healed 184. They told him, may he not bring a male to it, he fertilizes it and it gives birth? He said to them, I also said this only about a male (horse) [damaged one] 185 which cannot be healed. They told him, may he not bring a female to him, she is fertilized by him and gives birth? Rav Abin in the name of the rabbis there: This implies that one is forbidden to provide them with fetuses 186. There, we have stated: “If somebody buys a Non-Jew’s donkey fetus or who sells one to him even though he is not authorized, or one who enters into partnership, or accepts from him as contractor, or lets it in contract, is not liable for firstling.” Rebbi Haggai asked before Rebbi Yose, does this 188 not imply that one is forbidden to provide them with fetuses? He said to them, Rebbi Abin in the name of the rabbis there already preceded you: This implies that one is forbidden to provide them with fetuses.

184 To ever work again.

185 The text in parentheses is from the text here, the (correct) one in brackets from *Pesahim*.
186 Since the argument of the rabbis has nothing to do with Sabbath prohibitions. The 16a and Bekhorot 2b, disagrees and reports that R. Jehudah denies that a disabled cow will accept a male.

187 Mishnah Bekhorot 1:1.

188 The note that one is not authorized to sell a pregnant animal to a Gentile.

“Ben Bathrya permits horses.” Ben Bathrya said this only about a male horse because it kills its owner in war. Some say, because it runs after females, and some say, because it stands still to urinate. What is between them? A gelding. He who says because it runs after females, it does not run. He who says because it stands still to urinate, this one also stands still to urinate. [Rebbi Aha in the name of] Rebbi Tanhum bar Hiyya: If it gets old he binds it to the grindstone. Rebbi Yose ben Rebbi Abun in the name of Rebbi Huna: Ben Bathrya and Rebbi Nathan both said the same, as it was stated: “If he carried out domestic animals, wild animals, or birds, whether alive or dead, he is liable. Rebbi Nathan says, dead he is liable, alive he is not liable.” The rabbis hold that he is liable for a purification sacrifice and they answer him so. They answer following his own argument. Following your
argument, since you are saying because of rabbinic Sabbath prohibition, also we hold that if it gets old he binds it to the grindstone. Rebbi says, I am saying that it is forbidden for two reasons, as a weapon and as a large animal. It was stated so: A large wild animal is like a (small) domestic animal. Who stated this? Rebbi. The words of the Sages: Rebbi Bisna, Rebbi Hanan bar Abba in the name of Rav: A wild animal is like a (large) domestic animal.

189 At this moment the horse will not obey its master and therefore be dangerous.
190 Added from the Pesahim texts.
191 Then it is used like a beast of burden and the same restriction may apply as to the sale of cattle. Babli 16a.
192 For the laws of Sabbath. Everybody agrees that “a living person carries himself”; it is permitted to carry a human baby from private to public domains. The rabbis restrict this to humans; R. Nathan explicitly and Ben Bathya implicitly (Note 160) extend the rule to animals. Babli Sabbath 94a.
193 Tosephta Sabbath 8:34 Babli Sabbath 94a.
194 Why do they object because of the use of old horses which only implies a violation of rabbinic rules but not to the possible use of a younger horse in hunting which would violate biblical rules?
195 Which makes the seller of the weapon an accessory to murder before the fact. Babli 16a.
196 The correct text in brackets is from Pesahim, the text in parentheses is from Avodah zarah. In the last sentence, the Genizah text follows the one in Avodah zarah; this clearly is impossible.
197 A horse is considered a tamed wild animal, not domesticated by nature.
198 It should be Rav Hanin, not Rebbi. The Genizah text has the statement in the name of Rebbi Hyya, Rav’s uncle and foremost teacher.

Mishnah 7: One does not sell them bears and lions, or anything damaging to the public; nor does one build with them a basilica, a gallows, a stadium, or a rostrum. But one builds with them public and private baths; when they come to the cupola where an idol will be placed it is forbidden to build it.
199 Greek βασιλική “king’s palace”, a
government building in the provinces,
automatically dedicated to the worship of
Rome and the Emperor.
200 Since one may assume that most of
death sentences passed by the Roman
government are unjust.

Halakhah 7: “One does not sell them bears and lions,” etc. Therefore
something which does not present a danger to the public one may sell to them.
Our Mishnah follows Rebbi204. As it was stated205: “One who sees snake
charmers and conjurers, muqion, mupion, mulion, milarin, milaria, sigillarin,
sigillaria206, this is forbidden because of ‘seat of the scoffers,’ as it is said,207
in the seat of scoffers he did not sit. All this leads to neglect of the Torah, as
it is said208, but in the teachings of the Eternal is his desire. Going to the
theater209 is forbidden as pagan worship, the words of Rebbi Meir, but the
Sages say, when they present offerings it is forbidden because of pagan
worship, otherwise it only is forbidden because of ‘seat of scoffers.’ One who
goes to the theater to shout210, if it is for a public need it is permitted, if to
ingratiate himself it is forbidden. One who sits in the stadium is a spiller of
blood211. Rebbi Nathan permits because of two reasons, because he can shout
and save lives212, and he can testify for a woman that she can remarry213.

If he transgressed and built. Rebbi Eleazar said, it remains permitted214.
Rebbi Mana said, it rather seems reasonable following the opinion that it is
forbidden because he would have prevented215 the entire cupola.
204 It is not known what this refers to.
205 Babli 18b, Tosephta 2:6, Yalqut Ps. 1:1 (#613).
206 The different sources give different readings for the names of the performers. Yerushalmi:

\[
\text{ Mexicans מטוקים ממלוכים מטולוים סיגולריים ספילריים }
\]
Tosephta ed. Zuckermandel

\[
\text{ בוקחים מוקחים סגלדים ספילדים }
\]
Tosephta ed. princeps

\[
\text{ בקוחים מוקחים סגלוים ספילדים }
\]
Babli ed. princeps

\[
\text{ בקוחים מוקחים סגולוים ספילוים }
\]
Babli Ms. Munich

\[
\text{ בקוחים מוקחים סגולוים ספילוים בפיים }
\]
Yalqut

\[
\text{ בקוחים מוקחים סגולוים ספילוים בפיים }
\]
For the words appearing in the Yerushalmi there seems to be unanimity that the first three are maccus, the buffoon, corresponding to the Babli’s bucco, μῶκος the comedian, mulio the donkey trainer. Sigillaria is the holiday which concludes the saturnalia; Kohut notes a meaning “puppeteer” for sigillarius (סיגלריוס) quoted in DuCange’s Medieval Latin dictionary.

207 Ps. 1:1.
208 Ps. 1:2.
209 Probably meaning: amphitheater (E. G.). Both Greek tragedy and Comedy were religious ceremonies.
210 In the theater it was to vote with one of the parties. In the Babli sources (Babli and Tosephta), instead of מתקים “to ingratiate oneself” one reads מתקים "to be counted as one of them". The meaning is the same.
211 If there were no public, neither fights of gladiators nor fights of men with wild beasts would be staged.
212 If a wounded gladiator begs for his life, he can vote to let him live.
213 If a Jew is killed in one of these performances the spectator can testify that his wife is a widow and can remarry.
214 Halakhah 1:5, Note 156. The Babli, 19b, knows only of R. Eleazar’s ruling.
215 From the verb גַּדִּילוּת “to deviate”. Maybe if the Jew had refused to build the cupola it would not have been built.

216 Mishnah 8: One does not sell to them anything connected to the ground, but one may sell for when it will be cut. Rabbi Jehudah says, he may sell for the purpose of cutting.
Halakhah 8: “One does not sell to them anything connected to the ground,” etc. Rebbi Abun bar Hyya asked: Is there also a disagreement about large cattle? May one sell for the purpose of slaughter? It was found stated: Also large cattle is in dispute; Rebbi Jehudah says, he may sell for the purpose of slaughtering\(^{217}\).

216 This is a rule particular to the Land of Israel, to preserve the Jewish character of the land, as explained in Halakha 9. It does not apply to the diaspora.

217 Babli 20a. This is not dependent on the Land; it applies everywhere. The Babli defines R. Jehudah’s adversary as R. Meïr.

Mishnah 9: In the Land of Israel\(^{218}\) one does not lease houses to them and certainly not fields. In Syria\(^{219}\) one leases houses to them but not fields. Outside the Land one sells houses to them and leases fields, the words of Rebbi Meïr. Rebbi Yose says, also in the Land of Israel one leases houses to them but not fields; in Syria one sells houses and leases fields; outside the Land one sells both\(^{220}\).

218 As defined in Ševi’it 6:1.
219 All territory ruled over by David but not included in the Land proper; cf. Peah 7:6 Note 119.
220 The opinion of R. Yose is pre-eminent.
These are two parallel traditions, one in the name of Rebbi Abun instructed that it is forbidden to let them lease a grave in the Land of Israel because of “do not give them encampment in the Land.”

Rebbi Yose ben Abina instructed that it is forbidden to let them lease a grave in the Land of Israel because of “do not give them encampment in the Land.”

The different interpretations are based on reading the word as derived from the roots ובך, ובך. They will be discussed in the inverse order of the first quote.

Cf. Babli Menahot 66b Tosaphot s. v. מייחד.

Since a permanent irrevocable lease is the equivalent of a sale.

The entire theory built on Deut. 7:2 is Amoraic even though in the Babli it is supported by a baraita.

These are two parallel traditions, one in the name of R. Yose bar Hanina, the other in the name of R. Johanan.

Deut. 7:2. The verse refers only to the original Canaanite inhabitants.

224 The different interpretations are based on reading the word as derived from the roots ובך, ובך. They will be discussed in the inverse order of the first quote.

Cf. Babli Menahot 66b Tosaphot s. v. מייחד.

Since a permanent irrevocable lease is the equivalent of a sale.

The entire theory built on Deut. 7:2 is Amoraic even though in the Babli it is supported by a baraita.
do not give them free gifts. But was it not stated227: “It happened that Rabban Gamliel was walking on the road and saw a loaf of bread132 thrown on the road. He said to his slave Tabi, pick up this loaf. He saw a Gentile coming towards him and said to him, Mabgai228, take this loaf. Rebbi Illai ran after him and asked him, what is your name? He told him, Mabgai. From where are you? He told him, from the guard-tower229 villages. Did Rabban Gamliel ever come to know you?, He told him, no. Rabban Gamliel had it right by the Holy Spirit. We learned from him three things. We learned that one does not pass over food. And that leavened matter of a Gentile is permitted immediately after Passover. And that one follows the majority of travelers230:” Rebbi Jacob bar Zavdi in the name of Rebbi Abbahu: That is, in earlier times. But today we pass over edibles because of sorcery231.

232When he was leaving Akzib there came a person to ask about his vow233. He asked his travel companion, would you say that we drank a quartarius234 of Italian wine? He said to him, yes. He told the person who asked, walk with us until we dissipate our wine. When they came to the Tyrian Ladder235 Rabban Gamliel dismounted, covered himself236, sat down, and dissolved his vow. From his words we learned that a quartarius of wine intoxicates and that travelling dissipates the wine. Also that one does not ask about vows and gives no instruction after drinking wine237. Also one does not dissolve vows while walking but covered and sitting.” Rebbi Johanan said, so he opened for him: Some blurt out unthinking ly like sword piercing238 etc. For example, one who made a vow not [to eat] a loaf. Woe if he eats, woe if he does not eat. If he eats he violates his vow. If he does not eat he sins against himself239. What should he do? He should go to the Sages who will dissolve his vow as is written, but the sayings of the Sages are healing.

227 Tosephta Pesahim 2:15; Babli Eruvin 64b, Lev. rabba 37(3). There it is stated that he went from Acco to Akzib near the Lebanese border riding on a donkey and implied that it was the day after the end of Passover.
228 Levy reads the name as derived from paganus, “village dweller”. It is possible to see here the root תק “to fatten animals” said of pasture.
229 From Latin *burgus*, watch lower at a *limes*, Greek παπρός “tower”.

230 Since Tabi was circumcised and the time was just after the end of Passover, Rabban Gamliel riding on a donkey could not have asked his slave walking beside him to pick up a loaf of bread, and therefore acquiring it as ownerless, if he could not assume that it was lost by a Gentile since most of the travelers on that road were Gentiles. The road itself is described in *Ševi’it* (6:1 Note 21) as being the border between Jewish Galilee to the East and pagan Phoenicia to the West. If the leavened bread had been the property of a Jew during Passover its usufruct would be permanently forbidden to Jews.

231 Since abandoned food may be a health hazard, one is justified not to touch it.

232 Found in the same sources as the preceding paragraph, Note 227.

233 Which according to Pharisaic tradition can be dissolved by an ordained rabbi; cf. *Introduction to Tractate Nedarim*, p. 422; *Nedarim* 3:1 Note 7.

234 About 135 ml.

235 Modern *Rosh Hanniqra* on the Lebanese border.

236 Wrapped himself in his toga.

237 For priests officiating in the Temple this is a biblical prohibition, *Lev*. 10:9-10.

238 *Prov*. 12:18.

239 The *nazir* who vows to abstain from wine at the end of his period of abstinence has to bring a purification offering usually reserved for sinners. His sin is that he voluntarily deprived himself of permitted enjoyments; cf. *Nedarim* 1:1 Note 95, *Qiddušin* 4:12 Note 272.

240 But was it not stated: It happened that Rabban Gamliel while walking on the Temple Mount saw a beautiful Gentile woman and recited a blessing over her. Does Rabban Gamliel usually look at women? It was a curved road, like a *pswros*241, he looked at her because he could not avoid her. But did not Rebbi Ze‘ura in the name of Rebbi Yose ben Hanina, Rebbi Abba, Rebbi Hīyya in the name of Rebbi Johanan say: do not credit them with charm? What did he say? He did not say ḏḇâ’ṣḥwnta242 but “praised be He Who has beautiful creatures in His world,” because even if one saw a beautiful donkey, a beautiful camel,
a beautiful horse, one says “praised be He Who has such beautiful creatures in His world.”

240 Babli 20a/b. A parallel (not a copy) is dragged.” (E. G.)

in Berakhot 9:2, Notes 79-81.

241 The word is unexplained; perhaps επιστομα “trail or track made by something

However the verse refers only to

Rebbi Simeon, Rebbi Abbahu in the name of Rebbi Yose bar Hanina: a Jewish braider should not braid a Gentile because of “do not give on them charm.” Also a Jew should not be a Gentile’s best man because of do not contract marriage with them.243 Rebbi Isaac from Gufa asked before Rebbi Mana: It is forbidden to go to their wedding feasts, not a fortiori to become his best man? He told him, to put a biblical prohibition on it245.
Rabbi Simon had vineyard planters on King’s Mountain. He asked Rebbi Johanan who told him, let them lie fallow and do not lease them to a Gentile. He asked Rebbi Joshua [ben Levi], may one lease them to a Gentile? Rebbi Joshua [ben Levi] permitted it at a place where no Jews could be found as for example Syria. About Syria we can understand from the following: Rebbi Haggai went to Homs. Those of Bar Ashtor came and asked him: Since we cannot find Jews we lease to Gentiles; do we have to tithe through them? He sent and asked Rebbi Ze’ira. Rebbi Ze’ira asked Rebbi Immi (and said to him, rabbi, does one have to tithe?) He told him, one does not have to tithe because of them. From this you (Rebbi Simeon) [understand] to lease following Rebbi Yose. In addition, from what Rebbi Hanina (Rebbi Abbahu) the son of Rebbi Abbahu said, my father had a case. He sent and asked Rebbi Hiyya, Rebbi Yasa, Rebbi Immi, and they instructed him to lease following Rebbi Yose. Therefore one does not tithe through them.

From here intermittently through fol. 43a line 7 there is a Geniza (G) text, in many places very fragmentary, edited by L. Ginzberg (New York 1909). From fol. 41d line 42 there exists a second Geniza text from the Antonin collection edited by J.N. Epstein (E), Tarbiz 3 (1932) pp. 15-26, in addition to the Leiden ms. (L).

The present paragraph is a copy from Demay 6:1 (ש) Notes 15-18. In the readings, a reference (G) means that the word is not completely preserved in G.

A region conquered by King Yannai and part of the later Hasmonaean kingdom, not settled by the earlier returnees from Babylonia. Cf. Demay 5 Note 115, Ševi’it 9 Note 63. In Amoraic times it was settled only by Gentiles.

The text of the other two sources, “fields” is preferable over “vineyard planters”.

Added from ו and G, missing in L, required by the context.

The Gentile is not required to tithe. If he pays his rent in produce, is the landlord required to tithe? Produce in Syria has to be tithed only by rabbinic decree, twice removed from biblical duty. Since the Gentile acts on his own, not on behalf of the owner of the land, what he pays as rent is exempt Gentile produce.

Delete with ו and G.

Add as reading of ו and G.

Missing in G.

As explained in Note 249 there is no need to tithe. The only question is whether one should require them to tithe anyhow as a fine for leasing land to Gentiles, but since
the lease is legitimate following R. Yose agrees, 21a.

there is no reason for such a fine. The Babli

Mishnah 10: Also in a case where they said to lease they did not mean a dwelling because he will introduce idols as it is said, do not bring an abomination into your house for you would be anathema like it, etc. In any case he should not lease to him a bath house because it is called by his name.

255 Deut. 7:26. it cannot be operated on the Sabbath since people would think that the Jew operates it.

256 If the bath house (or any other public convenience) is known as the Jew's property it cannot be operated on the Sabbath since people would think that the Jew operates it.

“Also in a case where they said to lease,” etc. Therefore, at a place where one is used to sell, he may sell even a dwelling and lease a dwelling.

Rebfi Aha, Rebfi Tanhum bar Hiyya in the name of Rebfi Eleazar ben Rebfi Yose: Even a small room as in the tannery of Sidon. Not only all of it, but even one room. “If there were two, one inside the other, the inner one is liable, the outer one is not liable.” If there was one and it was subdivided into two, two and combined into one? Rebfi Abin in the name of the rabbis
This implies that if there was a field adjacent to a road it is forbidden to lease it to Gentiles because it is known by the name of the Jew and they plough there on Sabbaths and holidays.

257 Outside the Land for R. Meïr and in Syria for R. Yose.

258 *Deut.* 7:26 applies only to the Land. In the theory of the Babli, Gentiles outside the Land are no real idolators but only followers of inherited superstitions. Cf. Tosephta 2:8.

259 If a small room in an industrial complex cannot be leased to Gentiles as living space. A similar text in Babli 21b.

260 This is Mishnah *Ma`serot* 3:5 (Note 92). Harvested grain becomes liable for tithes only when it is being prepared for storage. An example of this is grain transported from the field to the courtyard attached to the farmer’s dwelling. R. Jehudah holds that if there is a courtyard inside another, the inner one only counts in this respect.

261 How do the rules of tithing apply? The question is inappropriate here and not answered.

262 Of Babylonia.

263 The argument of the Mishnah about leasing a bathhouse. In Tosephta 2:9, R. Simeon forbids leasing a field anywhere for the same reason.
Mishnah 1: One does not put up an animal in hostelries¹ of Gentiles since they are suspected of bestiality. A woman should not be alone with them² because they are suspected of forbidden sexual relations; a man should not stay alone with them since they are suspected of shedding blood. A Jewish woman should not be a midwife for a Non-Jew³ but a Non-Jew may be a midwife for a Jewish woman. A Jewish woman should not nurse the child of a Non-Jewish woman but a Non-Jewish woman may nurse the child of a Jewish woman at her home⁴.

1 Cf. Chapter 1, Note 123.
2 A single woman with any number of Gentile men.
3 Since she helps to increase the number of pagan worshippers. This reason given in the Halakhah is (incorrectly) part of the Mishnah in some Babi and Mishnah texts.
4 The wet-nurse should not be allowed to remove the baby from his mother’s house since she might kill it.
Halakhah 1: “One does not put up animals in hostelries of Gentiles,” etc. Rebbi Ze‘ira, Rebbi Abbahu in the name of Rebbi Yose ben Rebbi Hanina; Rebbi Abba, Rebbi Jonah: explain it following Rebbi Eliezer, since Rebbi Eliezer said “it may not be bought from Gentiles.” Rebbi Jonah asked, why do we not explain it according to everybody, following what Rebbi Eleazar said in the name of Rav: Even one who says it is permitted to sell [says] it is forbidden to leave alone. If he transgressed and left it alone by everybody’s opinion. Rebbi Jeremiah said, let us hear from the following: “A woman who was jailed by Gentiles.” Rebbi Yose said, it is different for a woman because she usually cries. Think of it if she was mute! She uses sign language. What about it? Explain it following Rebbi Eliezer, since Rebbi Eliezer said “it may not be bought from Gentiles.” They wanted to say, where do Rebbi Eliezer and the rabbis disagree? About the cow, because of “eminence was given to the cow, an adornment was made for the cow.” But since the rabbis answer to Rebbi Eliezer all sheep of Qedar will be assembled for you, this says that Rebbi Eliezer disagrees about everything. Rebbi Hosaia asked, does one reply with an argument about the future against one about the past? Rebbi Abin asked, does one reply with an argument when evil inclinations will have disappeared against one when evil inclinations exist?

5 Unfortunately G is very lacunary here; therefore its readings are not given after the Hebrew text. The Halakhah starts: “R. Ze‘ura, R. Abbahu in the name of R. Yose ben Hanina, R. . . . . R. Abbahu in the name of R. Yose ben Hanina, explain it . . . .” There is no reason to mention the sixth generation R. Abba III and the fifth generation R. Jonah who later disagrees with the statement if already it was attributed to the second generation R. Yose ben Hanina.

6 The Mishnah which forbids to put up unsupervised animals in the stable of a Gentile hostelry makes travel outside Jewish settlements practically impossible. An attribution to R. Eliezer removes the first part of the Mishnah from practice.

7 Mishnah Parah 2:1. This refers to the Red Cow (Num. 19) whose ashes are needed to cleanse people from the impurity of the dead. The Cow is not a Temple sacrifice; how far the restrictions imposed on sacrificial animals and the officiating priests apply to the Cow and its officiants are old
matters of dispute between Sadducees and Pharisees (Mishnah Parah 3:3,7) and among the rabbis themselves. One of the biblical requirements is that the Red Cow never carried a yoke (Num. 19:2). In Mishnah Parah 2:1, a first statement of R. Eliezer validates a pregnant Red Cow for the ceremonies; the reason is explained in Mishnah 4 by his student’s R. Ilai’s son R. Jehudah, that a bull mounting the Cow on his own cannot be considered making her carrying anything; only copulation by human intervention makes the ox the equivalent of a yoke. The majority rejects the ruling; it considers the Cow and its fetus as two separate beings but v. 19:3 requires the Cow alone to be taken. These restrictions do not apply to ordinary sacrifices. R. Eliezer then forbids buying a Red Cow from Gentiles since a sodomized animal is unfit for the altar; the Sages disagree since without reason one does not suspect that such a thing happened; this would make the Mishnah here unreasonable. (The last generation R. Yose bar Abun even introduces buying a Red Cow from a Gentile owner, they also allow to buy sacrificial animals from him. The question arises whether R. Eliezer will agree with this or not. The assumption here is that R. Eliezer will agree that sacrifices can be bought from Gentiles but not the Red Cow, whose ceremonies in pharisaic theory were made with many non-scriptural restrictions because of an important difference with Sadducees in matters of ritual purity (Mishnah Parah 3:7,8).

10 Mishnah Ketubot 2:9. If she is jailed because of money matters one must assume that she was not raped; if she was condemned to death one must assume that she was raped or consented to sex with her jailers. If a woman can be alone in the custody of Gentiles without being raped, may the same not be assumed of female animals?

11 The argument appears to be cogent.

12 In the Mishnah, not only do the rabbis permit to buy a Red Cow from a Gentile owner, they also allow to buy sacrificial animals from him. The question arises whether R. Eliezer will agree with this or not. The assumption here is that R. Eliezer will agree that sacrifices can be bought from Gentiles but not the Red Cow, whose ceremonies in pharisaic theory were made with many non-scriptural restrictions because of an important difference with Sadducees in matters of ritual purity (Mishnah Parah 3:7,8).

13 Is. 60:7. The verse ends: they will be brought on My altar for pleasure. This gives divine sanction for using animals raised by Gentiles for the altar. Since the verse speaks of sacrifices, not of the Red Cow, R. Eliezer must hold that sacrificial animals cannot be bought from Gentiles. The same argument is quoted in the Babli 24a.

14 The preceding argument does not prove anything in practice since in the next paragraph it will be shown that in messianic times the Gentiles will accept the Torah. Their animals may well be acceptable then but not now.

15 This is the same argument as before.
Rav Huna said in the name of Rav: They weighed for me my (sheqels) wages, thirty pieces of silver. These are the thirty commandments which the descendants of Noah will take upon themselves in the future. But the rabbis say, there are the 30 just persons which the world never will be lacking, as Rebbi Nahman said in the name of Rebbi Mana, the world cannot be with less than 30 just men like our father Abraham. What is the reason? Abraham will certainly be, the numerical value of היה is 30. Sometimes the majority are in Babylonia and the minority in the Land of Israel; sometimes the majority are in the Land of Israel and the minority in Babylonia. It is a good sign for the world if most of them are in the Land. Rebbi Hiyya bar Julianus in the name of Rebbi Hosaia: In the future the descendants of Noah will take all commandments upon themselves. What is the reason? Then I shall transform Gentiles’ purified lips. But at the end they will renege on it. What is the reason? Let us break their chains, and throw from us their ropes! That is the commandment of phylacteries; that is the commandment of sisit.

16 In G: asked. This paragraph interrupts the discussion of the Mishnah and turns to explaining the verse Is. 60:7 quoted earlier.
17 Sach. 11:12. The quote is wrong in L (in parentheses), correct in G [in brackets].
18 “In the future”, i. e, in the time of the Messiah. Gen. rabba 98(14) as opinion of
R. Johanan. In the Babli, Hulin 92a, in one opinion 30 commandments which the Gentiles already took upon themselves, of which they keep only three; one of them being not to allow homosexual marriages.

19 Gen. rabba 35(2) in the name of R. Simeon ben Iohai. In the Babli, Hulin 92a, in another opinion the 30 just Gentiles on whose merit the Gentile world exists. The Jewish world exists for the Babli on the merit of 36 just men (Sukkah 45b, Sanhedrin 97b).

20 Gen. 18:18.

21 5+10+5+10=30.

22 Gen. rabba 98(14) as opinion of Rav.

23 Zeph. 3:9. The verse ends: They all are invoking the Eternal’s Name, to serve Him with united shoulder, implying that the Gentiles will accept the Jewish style of worship. Babli Berakhot 57b, in the name of R. Simeon ben Iohai.

24 Ps. 2:3; cf. Babli 3b.

25 Midrash Psalms 2(8). The chains are the straps of the phylactery on the arm.

26 These are the “ropes”, Tosaphot Avodah zarah 3b s. v. מאנייך.

27 Rebbi Isaac and Rebbi Immi were sitting and asking, is it not written

On that day they slaughtered of the booty for the Eternal? They explained it, but we do not know whether the colleagues explained it or Rebbi Immi explained it, from previous ones, from booty which was in their hands they sacrificed.

But is it not written: The men of Bet Shemesh brought an elevation offering and slaughtered family offerings to the Eternal, oxen? Can we learn anything from the rulers of the Philistines? Did not Rebbi Abbahu say in the name of Rebbi Yose ben Hanina, they even sacrificed females, the cows they offered as elevation offering to the Eternal.
But is it not written\textsuperscript{32}, Saul said, they brought them from the Amalekite? One does not learn from Saul; as Rebbi Simeon ben Laqish said, Saul was a sycamore shoot\textsuperscript{33}.

But it is not written\textsuperscript{34}, David bought the threshing floor? He bought but did not sacrifice. But is it not written\textsuperscript{35}, Arawna said to the king, may the Eternal, your God, have pleasure with you. May he find pleasure with you in prayer.

But is it not written\textsuperscript{36}, Also from the hand of a stranger you should not bring your God’s bread from any of these? From any of these you do not sacrifice; you buy unblemished ones and sacrifice. What does Rebbi Eliezer do with this? You are buying for money and sacrifice? The one who stated “for money” cannot follow Rebbi Eliezer\textsuperscript{37}.

27 One returns to the prior topic, to try to understand R. Eliezer’s position in view of biblical verses which seem to indicate that Gentile animals are perfectly acceptable as sacrifices.
28 \textit{2Chr. 15:11}. At first glance this refers to the booty which they took from the Nubians as described in Chapter 14 since no other war of Asa was mentioned.
29 Since Chapter 15 does not refer to the war described in Chapter 14, it is not necessary to assume that “the booty” was taken from the Nubians.
30 \textit{1S. 6:15}, one the day the Philistines returned the Ark on a carriage drawn by cows.
31 \textit{1S. 6:14}. In \textit{Lev. 1:3} it is spelled out that an elevation offering must be a male animal. Since the entire proceedings were irregular, one cannot infer anything about the rules to follow.
32 \textit{IS. 15:15}. As explained in v. 21, the animals taken from the Gentile tribe were to be slaughtered as sacrifices. Babli 24b.
33 Something inedible. In the Babli, \textit{Eruvin 53a/b}, the verse \textit{1S. 14:47} in interpreted that religious practice never follows Saul. The same is intended here.
34 \textit{2S. 24:24}.
35 \textit{2S. 24:23}. To give pleasure before the Eternal usually is asserted of sacrifices (e. g., \textit{Ex. 28:38}). Babli 24b.
36 \textit{Lev. 22:25}.
37 Since R. Eliezer considers all animals of a Gentile unfit for the altar. But he must read the verse as absolute prohibition of accepting any sacrifice from a Gentile, similar to \textit{Sifra Emor Pereq 7(12)} where the verse is read to prohibit accepting money of the Temple tax from Gentiles.
It was stated: 38 “One does not put up animals in hostels, even males next to males and females next to females; it is not necessary to say males next to females and females next to males.” Males next to males, what do you have? His beloved comes and she does not find him, then she is impregnated by it 39. Females next to females, what do you have? Her lover comes and does not find her and impregnates it. Rebbi Haggai in the name of Rebbi Ze’ira: Not only the Jew’s animal at a Gentile’s but even a Gentile’s animal at a Jew’s should not be left alone with another Gentile acquaintance, lest it cause him a mishap 40. But then even if he leased his animal it would not be nice to return it to be alone with him, lest it cause him a mishap? He is suspected of cohabiting with another’s animal; he is not suspected to have sexual relations with his own animal. For he knows that if he cohabits with her he makes her sterile; therefore he will not cohabit with her 41.

38 Babli 14a, Tosephta 3:2.
39 By the animal. Since Gentiles are used to have pre- and extramarital sex, if one of the partners feels the need for sex but does not find his/her partner, he/she will take an animal as replacement to satisfy him/her. The Tosephta holds otherwise, viz., that male animals attract homosexuals and females heterosexuals. If males are put next to females, animal copulation will stimulate Gentile voyeurs.
40 The Jew would be the instrument of the second Gentile’s copulation with the first Gentile’s animal.
41 Babli 15a, 22b.

“But one may put up an animal in a Samaritan hostelry,” 42 etc. This implies that Samaritans are not suspected of forbidden relations. And it was

(40c line 50)
stated thus: “A woman may be alone with two men, even if both are slaves or one a Samaritan and one a slave. But she should not be alone with a Gentile. His mother-in-law, and his wife’s sister, and all other forbidden relations should be alone with him but require the presence of two [others].”

42 Tosephta 3:1. The Note “etc.” implies that the entire Tosephta (or an equivalent Galilean baraita) should have been quoted.
43 Tosephta Qiddušin 5:9.
44 Two Jews. This excludes being alone with husband, father, son, and possibly brother (Qiddušin 4:11, Notes 246-254).
45 Converted and circumcised who belong to a Jewish familia.
46 This statement is obviously incomplete since a Jewish woman is not allowed to be alone with a single Jewish man, so certainly not with a single Gentile. One must read with the Tosephta and G, of which a new leaf starts here: “not even with a hundred Gentiles.”
47 Tosephta Qiddušin 5:10, Babli Qiddusin 81b. These Babli sources have “sister” instead of “wife’s sister” but the Yerushalmi text is confirmed by G. In contrast to the Babli, the Yerushalmi both here and in Qiddušin unquestionably permits a man to be alone with his sister (but not to share a bed with her.)

It was stated: “One sells them neither weapons nor accessories to weapons. One does not sharpen weapons for them.” Explain it in a town of only Gentiles. Is a woman not in danger to be killed? Rebbi Immi said, explain it about a muscular one. Rebbi Abin said, even you may say [about a weak one.] A woman may hide herself and say, I am a Gentile, but a man cannot hide himself and say, he is a Gentile.

48 Tosephta 2:4, Babli 15b.
49 Such as a sheath of a sword.
50 But in a town with Jewish inhabitants one may provide weapons for the security forces.
51 This refers to the Mishnah which states that a woman is in danger to be raped but a man to be killed.
52 In G: R. Mana, the same in a quote in Or zarua. In the latter’s interpretation, a
strong woman is one who would survive a gang rape. In a quote in Tosaphot 25b s. v. R. Jeremiah.

53 Added from G. (The vocalization is from G.)

54 Since he is circumcized.

It was stated

54 “If a Gentile is paired with a Jew, he puts him on his right hand side. Rebbi Ismael ben Rebbi Yose says, with a sword, at his right; with a staff, at his left. If he climbs with him to an upper floor or descends to the exit, the Jew should be higher and the Gentile below. He should not lie down before him lest he smite his skull. And he should extend the way to him, that if he asks him where he goes he should indicate a farther distance, as our father Jacob did with Esau, until I shall come to my Lord at Seir. But he went to Sukkot. Rebbi Huna said, we do not find that our father Jacob went to Seir. Rebbi Yudan, son of Rebbi [Aivo]57, he spoke to him of the future world, when saviors will climb on Mount Sion to judge Mount Esau.58

54 Tosephta 3:4, Babli 25b. weapon.

55 Since the sword is girded at his right side and the staff held in his left hand. The Gentile should not have space to swing his weapon.
“A Jewish woman should not be a midwife for a Non-Jew, for she brings a son to pagan worship; but a Non-Jew may be a midwife for a Jewish woman.” It was stated so: From the outside but not the inside. She should not put her hand inside not to squish the fetus in her innards, and she should not give her a cup of root-extract to drink. If she was a medical doctor? This will come as what Rebbi Jacob bar Aha said in the name of Rebbi Johanan: If he was a professional healer it is permitted. And here, if she was a medical doctor it is permitted. [Rebbi Yose bar Abun, these questions...]

59 Tosephta 3:3, Babli 26a.
60 This is the reading in all sources except G which reads יאו “Gentile” instead of יא “son”. Cf. Chapter 1, Note 177.
61 A concoction used to prevent pregnancies. The obligation of having children uniquely is on the male (Mishnah Yebamot 6:6); therefore a woman is permitted to use chemical birth control methods which do not change the sex act. Since Gentiles are suspect as potential murderers such a potion may be taken only from a Jewish source or, as indicated later in this paragraph, also from a duly qualified Gentile professional.
62 Babli 27a, also in the name of R. Johanan. He has to worry about his professional reputation.
63 Fragment in G of a sentence missing in L and the editio princeps; probably a confirmation of the permission to use Gentile certified medical professionals.

“A Jewish woman should not nurse the child of a Non-Jewish woman” because she gives it life. Rebbi Yose said, this implies that one may not teach him a trade. As the following: Two trades, glaziers and carpenters...
were at (Giro) [Acco]. The glaziers did not teach and continued, the carpenters taught and were pushed out.

"But a Non-Jewish woman may nurse the child of a Jewish woman" as it is written, their kings will be your pedagogues and their princesses your wet nurses. It was stated: A baby nurses continuously from a Non-Jewish woman or from a non-kosher animal and one brings him milk from anywhere and does not worry either about abomination or because of impurity.

64 In Tosephta 3:3 “because she raises a son for pagan worship” as in the preceding paragraph. G is defective at this point.
65 In order to live one has to make a living. Therefore it is a religious duty for a man to see to it that his son learn a trade; cf. Qiddušin 4:12.
66 A hybrid of Greek κισσοτός “box, chest” (in LXX used to translate דָּא) and the Latin suffix -arius “craftsman of . . .” There exists a Greek word κισσοτάριον but this is a diminutive, “small box or chamber” and does not designate a profession.
Jastrow explains as “maker of pickles” but this is a gross misreading of κισσότιον in Terumot 10:3, Note 36.
67 No place Giro (ms. L) is known. (If one would read ecib the place would be Jedda in Arabia.) Acco (reading of G) was known as a city divided between Jews and Gentiles, only partially within the borders of the Land; cf. Ševi’it 6:1 N. 30.
68 They did not accept Gentile apprentices.
69 Is. 49:23, giving divine sanction to Gentile wet nurses.
70 The Babylonian attitude is expressed in Tosephta Šabbat 9:22: One does not nurse from a Non-Jewish woman or from a non-kosher animal but if it was a matter of survival nothing stands before saving lives.

Mishnah 2: One may be healed from the healing of property but not healing of persons. One may not be shaved from them anywhere, the words of Rebbi Meïr; but the Sages say it is permitted in the public domain but not in private.

71 Since the barber easily may cut the client’s throat with his knife.
Did he not hear what Rebbi Jacob bar Abbahu said in the name of Rebbi Johanan: “healing of property,” etc. Rebbi Jacob bar Zavdi in the name of Rebbi Abbahu: “healing of property,” etc. his animal. “Healing of persons,” his body. Rebbi Abba in the name of Rav Jehudah: If it was scratched it is forbidden. As in the following case: Rebbi Immi went with Rebbi Jehudah the Prince to the hot springs of Gader. He hurt his finger and put a bandage on it. He saw it penetrate and cut it off. Did he not hear what Rebbi Jacob bar Aha said in the name of Rebbi Johanan: If he was a professional healer it is permitted. This is not comparable. There if it was scratched it is permitted, but here it was scratched and is forbidden.

72 Babli 27a.

73 Babli loc. cit. He does not permit any Gentile doctor, even qualified, to do any surgical procedure on the body of a Jew; only medication can be accepted.

The translation reads here as in the sequel, not as it is missing at this passage.

74 Where usually the intercalation of a month was announced.

75 Latin spemento “pad, wound dressing”;

cf. Orlah 3:1 Note 20.

76 Arabic ṣalm “to cut”. The feminine suffix shows that the bandage (f.) was cut off, not the finger (m.).

77 Deriving from a root like Arabic khamsh “to scratch”. He could not go to the local Gentile doctor because he needed surgical intervention which according to Rav Jehudah is forbidden; R. Johanan permits only non-surgical interventions.
May one have one’s eyelids painted by them\(^78\)? Rav said, anybody who wants to be blinded may be blinded. Levi said, anybody who wants to die may die\(^79\). Rav never had his eye painted; Levi had his eye painted. Rebbi Abba said, but do we not see that they taste this\(^80\) *collyrium*? We may say that they taste it if it is good. If it is no good it keeps and blinds. Opium\(^81\) is dangerous. Treacle\(^82\), Rebbi Simon says it is forbidden; Rebbi Johanan\(^83\) says it is permitted.

\(^{78}\) Applying *kohl*, originally the Aramaic/Arabic name for antimony, then used for any paste applied in ophthalmology.

\(^{79}\) Babli *Niddah* 55b.

\(^{80}\) In G: E. Immi. This seems a more trustworthy reading.

\(^{81}\) Greek κόλλωρα “eye salve”.

\(^{82}\) Greek ἄραμα, *scil.* αὐτίδοτος, “antidote against a poisonous bite.”

\(^{83}\) 40d line 12

(40d line 12) "I am certain, what is the statement, when the flesh is bonded and does not come off, we shall not say that it is a healing agent.

κορμοῖς βέβαιος ἐστιν ἡ ἀνάγκη καὶ ἑτοίμασθεν καὶ ἔτοιμος. ἂν μὴ ἐτοίμασθεν καὶ ἑτοίμος ἔστω.

καὶ ἔτοιμας ἑτοίματος ἔστω. Καὶ ἐτοίμασθεν καὶ ἕτοιμος ἔστω. ἂν μὴ ἐτοίμασθεν καὶ ἑτοίμος ἔστω. Καὶ ἐτοίμασθεν καὶ ἕτοιμος ἔστω.

καὶ ἔτοιμας ἑτοίματος ἔστω. Καὶ ἐτοίμασθεν καὶ ἕτοιμος ἔστω. ἂν μὴ ἐτοίμασθεν καὶ ἑτοίμος ἔστω. Καὶ ἐτοίμασθεν καὶ ἕτοιμος ἔστω.

καὶ ἔτοιμας ἑτοίματος ἔστω. Καὶ ἐτοίμασθεν καὶ ἕτοιμος ἔστω. ἂν μὴ ἐτοίμασθεν καὶ ἑτοίμος ἔστω. Καὶ ἐτοίμασθεν καὶ ἕτοιμος ἔστω.
The colleagues in the name of Rebbi Abba bar Zavda: Anything inside of the lips one heals on the Sabbath. Rebbi Ze‘ira objected, did we not state: “A person having a tooth ache should not suck vinegar with them”? Is this not inside from the lips? Rebbi Ze‘ira did not say so, but Rebbi Ze‘ira in the name of Rebbi Abba bar Zavda: Anything inside a body cavity one heals on the Sabbath. Rebbi Ze‘ira, Rebbi Abba bar Zutra, Rebbi Hanina in the name of Rebbi: One treats the bone of the skull on the Sabbath. Rebbi Hyya the Mede, Rebbi Jona, Rebbi Ze‘ira, Rebbi Abba bar Zutra, Rebbi Hanina in the name of Rebbi: One treats glands of the throat on the Sabbath. Rebbi Abahu in the name of Rebbi Johanan: One treats an infected eye on the Sabbath. There, they say in the name of Rebbi Johanan: Tops of hands and feet are a danger. Rebbi Abahu in the name of Rebbi Johanan: Red color is dangerous. Rebbi Abin said, one removes the sting of a scorpion on the Sabbath. Rav said, wine for exterior treatment of the eye is permitted, inside the eye it is forbidden. Samuel said, tasteless spit is forbidden for the eye on the Sabbath. From this you infer for lichen. The rabbis of Caesarea said, ranula is dangerous. Rebbi Hizqiah (said) [from Acco] in the name of the rabbis of Caesarea: spider sickness is dangerous. Rebbi Samuel bar Rav Isaac: gangrene is dangerous. Rebbi Jeremiah said, one can put sour dough on it on Passover. A boil is permitted. Rebbi Yose said, the Mishnah says this: “A small needle to remove a thorn.” Otherwise, what is the difference between a thorn and a boil? Darkening of the eye, they asked Rebbi Jeremiah. He told them, is not Rebbi Abba available for you? They asked Rebbi Abba who permitted it to them. He told them, also I am permitting it.

83 From here to almost the end of the Halakhah there is a parallel in Ṣabbat 14:4 (_invoke Hazan_); in addition the present paragraph still is available in a Genizah text (G). If these two sources present a common reading different from the text here, one may assume that the text here is in error, either by the scribe or in the text from which he copied.

84 In the Babli, 28a, this is the position of Rebbi Immi. Since medical practice usually involves activities biblically forbidden on the Sabbath, such as compounding medicines and ointments or surgical interventions, also healing activities which
do not involve these prohibitions are rabbincally forbidden on the Sabbath. However, if a condition is life-threatening, Sabbath prohibitions do not apply. A declaration that “one heals such-and-such a condition on the Sabbath” is the equivalent of declaring the condition as life-threatening.

85 Mishnah Sabbath 14:4. While one is permitted to drink (diluted) vinegar on the Sabbath, one may not use it as a pain killer since this is medical treatment of a situation which in general is not life-threatening.

86 Babli 27b/28a, in the name of R. Johanan.

87 Any injury to the skull bones.

88 Babli 28b. The translation used here of “daughters of the ear” is an interpretation of Rashi’s explanation in the Babli: “Sinews of the ear which sometimes are lowered and keep the jaws open; then it is necessary to lift them and this is dangerous.”

89 “An eye which rebelled”: it feels as if the eye would leave its place. Babli 28b.

90 Any wounds at these places are considered life-threatening. Babli 28a.

91 Dark red color of a wound is indication of a life-threatening infection.

92 Babli Sabbath 108b, with the names of Rav and Samuel switched. Since people sometimes put wine on their eyelids for non-medical reasons, it is permitted to do the same for minor aches for which medical intervention would be forbidden on the Sabbath.

93 A skin disease, purely external.

94 “Frog” (Aramaic), Latin ranula, an infection of the mouth.

95 The text in parentheses is from the Leiden ms., the one in brackets from G and Y.

96 This may either describe the bite of a spider or more likely a cancerous growth looking like a spider.

97 Using leavened matter on Passover is a deadly sin but for medical purposes in life threatening situations it may be used without hesitation.

98 A boil filled with pus may be opened on the Sabbath.

99 Mishnah Sabbath 17:2. As a matter of principle one may move a vessel on the Sabbath only if it is of any use on this day. A sewing needle cannot be used for its usual function on the Sabbath but may be used to remove a thorn in one’s foot or to open a boil.

100 This may describe a cataract or glaucoma.

Rebbi Abbahu in the name of Rebbi Johanan. Scurvy is dangerous. Rebbi Johanan had it; he was treated by the daughter of Domitianus of Tiberias. Friday evening he went down to her and asked her, will I need anything tomorrow? She said no, but if you need anything take date pits, some say of Nicolaus dates, split and heated, skin of barley grain, and dry excrement of a baby, grind it and apply it; do not tell this to anybody. The next day he went up and preached it in the House of Study. She heard it and strangled herself; but some say that she converted. You understand from this three things. You understand that scurvy is dangerous. You understand what Rebbi Jacob bar Aha said in the name of Rebbi Johanan: If he was a professional healer it is permitted.

Rebbi Joshua ben Levy was suffering from colic; Rebbi Hanina and Rebbi Jonathan instructed him to grind tahlusin, put it in old wine and drink it to avoid becoming endangered.

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Rebbi Joshua ben Levy was suffering from colic; Rebbi Hanina and Rebbi Jonathan instructed him to grind tahlusin, put it in old wine and drink it to avoid becoming endangered.
she lost her trade secret or she converted
because she admired R. Johanan who made
the recipe public and did not try to make
money through his knowledge.
109 Since R. Johanan acted on this, it is
practice notwithstanding R. Ze’ira’s
criticism.
110 Greek ἁπλόν, “gut, disease of the
colon.”
111 This probably is a plural of ἀκόλοχος
“hard unripe date” which can be ground
rather than ἰλέλειον “cress, nasturtium” which
could be cut but not ground.
112 Since this is not a usual drink; its use
on the Sabbath is rabbinically prohibited but
to avoid future danger this prohibition can
be waived. R. Joshua ben Levy was himself
at least as qualified as the other two
authorities to decide but he did not want to
apply a leniency to himself on his own
word.

(40d line 42) רב בריה חיה ליה בבל. אמר תד ולשין לח שמשיה דשב וקבב(א)יאשינ. ימ
гибס אפרöh ליה. מייא אפרון עליי. אפור לחה. מייל פק. פייו. חוה ליה איות מית לוה

שמיעカフェ מיטלאה. ותיה לכה קלשעה קגאפה קפינ משליפה.

לעיל 21. אמר ראה משמיע לח מה. מית הדומא 3 שמסInitialState הדומאฯ

שהופך ממלכת.

רב יטקב שבח רב טיקת. בכלה מפריר חיא משותדוה דרה ויגלו עריה ושפרות המקוה.

רב פייקס בטין. דע כדר. קשאמר שלabama על עליים משבדויה תורה. ת börו. ול. טמא. יא

ריב אמר ל. עליים קזר. וורואים כל משבודתיה וזרה. ד toaster קין מזר. יא

רי גאיה חיה לעליים זכימרייה. איזוין קלח מitage בדויה ליה ארשאה. אייתון קליינ זקור זיאשא. אפור רב מヶ月. יא

והיה רב הוה אבא אדיע מאי חוח אל קוה השיט.

(40d line 54) רבי ישמעאל אמר ליה: "אף כי לא עלה, לא יכין ליה." (40d line 55) раб и целен

(40d line 42) מייא אפרון עליי. אפור לחה. מייל פק. פייו. חוה ליה איות מית לוה

(40d line 54) רבי ישמעאל אמר ליה: "אף כי לא עלה, לא יכין ליה." (40d line 55) раб и целен

(40d line 42) מייא אפרון עליי. אפור לחה. מייל פק. פייו. חוה ליה איות מית לוה

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(40d line 42) מייא אפרון עליי. אפור לחה. מייל פק. פייו. חוה ליה איות מית לוה

(40d line 54) רבי ישמעאל אמר ליה: "אף כי לא עלה, לא יכין L

(40d line 42) מייא אפרון עליי. אפור לחה. מייל פק. פייו. חוה L

(40d line 54) רבי ישמעאל אמר L

(40d line 42) מייא אפרון עליי. אפור L

(40d line 54) רבי ישמעאל אמר L

(40d line 42) מייא אפרון עליי. אפור L

(40d line 54) раб и целен
Rebbi Jacob [bar Idi] in the name of Rebbi Johanan: One heals with anything except pagan worship, uncovering nakednesses, and spilling blood. Rebbi Phineas asked: So far if he said, bring me leaves from pagan worship, and he brought him. If he said to him bring me leaves (unspecified) and he brought him from pagan worship? Let us hear from the following: Rebbi Aha had a fever attack. They brought him from the penis of Dohi but
he did not drink. They brought to Rebbi Jonah and he drank. Rebbi Mana said, if my father Rebbi Jonah had known from where it was, he would not have drunk

Rebbi Huna said, (this means) [a baraita implies] that one does not heal through uncovering nakedness, as it was stated: The Sabbath was permitted in exceptional cases; the betrothed maiden was never permitted in exceptional cases. Was not the Sabbath permitted in exceptional cases for healing? Therefore the betrothed maiden was never permitted, not even for healing. Not only if one said to another, bring me a married woman, but even to hear her voice, as the following: In the days of Rebbi Eleazar a man loved a woman and fell dangerously ill. They came and asked Rebbi Eleazar, should she parade before him that he may live? He said to them, he should die but not this. May he hear her voice and live? He said to them, he should die but not this. How was it? Rebbi Jacob bar Idi and Rebbi Isaac bar Nahman, one said, she was a married woman, but one said, she was single. One who said that she was a married woman we understand. But the one who said that she was single? Did not Bar Koha the carpenter love a woman in the days of Rebbi Eleazar and (became dangerously sick) [and he permitted him]? One case about a married woman and the other about a single one. Even you may say, here and here about a single one, here and here about a married woman. Explain it that he became infatuated with her when she still was married. Some want to say, she was a woman of substance (and did not listen to him) [and did not want to marry.] Everything which he did was forbidden; therefore he did permit nothing to him.

Rebbi Hanina said, (this means) [a baraita implies] that one does not heal through spilling blood, as we have stated there: “If most of his body was outside one does not touch him,” we suspect that he will live, “for one does not push aside one life before another life.” Not only if one would say, kill this person, but even if he tell him, injure that person. A Gentile against a Gentile, a Gentile against a Jew, is liable. A Jew against a Gentile is not liable. Rav Hisda asked, may one save the life of an adult with the life of a minor? Rebbi Jeremiah objected, did we not state, “If most of his body was outside one does not touch him, for one does not push aside one life before
another life”? Rebbi Yose ben Rebbi Abun in the name of Rebbi Levi: 132 There it is different for it is not known who is endangering whom.

133 It happened that Eleazar ben Dama was bitten by a snake and Jacob from Kefar-Sama came to heal him (and told him, I shall speak to you) 134 in the name of Jesus ben Pandera. Rebbi Ismael said to him, Ben Dama you are not allowed. He told him, I shall bring a proof that he can heal me. He could not bring proof before he died. Rebbi Ismael said to him, you are blessed, ben Dama, that you left this world in peace and did not tear down the fences of the Sages, (to confirm) 134 as it is written 135, he who tears down a fence will be bitten by a snake. But did not a snake bite him? But that it will not bite him in the Future World 136. What could he have said? Which a person should do and live by them 137.

113 R. Joshua ben Levi’s grandson.
114 This name (or Panteres) is unexplained. [Perhaps a distortion of Greek πανταρκής, Latin Pantarces, “all-helping”, a surname of Jupiter (E. G.)].
115 R. Joshua ben Levi asked the Christian missionary.
116 The grandson died.
117 From the text in Šabbat, needed for chronological reasons. In the Babli, Pesahim 25a, the tradition is by R. Abin (Abun) in the name of R. Johanan.
118 The three sins which one is not permitted to commit even in order to save one’s life. Since Christian faith healing is rejected before pagan healing is discussed it is clear that it is not rejected as pagan but as falsely claiming to be Jewish.
119 A pagan statue with a spout in form of a penis, like Brussel’s Manneken Piss.
120 Therefore healing by idolatrous materials is forbidden even if not specifically asked for.
121 Since the proof follows the statement, the text in brackets, from Šabbat, has to be preferred over the text here (in parentheses).
122 The technical term for criminal acts of a sexual nature, including but not restricted to incest and adultery.
123 The laws of the Sabbath are suspended in the Temple where the prescribed sacrifices are slaughtered and burned, actions which outside would be capital crimes. But a preliminarily married woman is absolutely forbidden for any man without exception.
124 Babli Sanhedrin 75a. The text in the Babli makes it clear that R. Eleazar here is the Tanna, ben Shamua.
125 It is possible that Ben Koha is not a proper name but means “strongman”.
126 The text in brackets is from Šabbat, to be preferred over the text here in parentheses. The main point is that R. Eleazar permitted the man to date the woman and to contract a marriage which was neither pre-arranged nor brokered.
127 The text in brackets is from Šabbat, to
be preferred over the text here in parentheses. In the Babli they hold that the man was not interested in marriage at all, only in sex.

128 Mishnah Ahilut 7:6. The Mishnah states that if a child during childbirth endangers the life of the mother one saves the mother’s life by cutting the fetus into pieces. But if head and part of the body are already born so that the baby breathes on his own one may not harm him. Maimonides in his Mishnah Commentary notes “all this is obvious and does not need commentary.”

129 Even though the baby might be stillborn (this includes the possibility that he might not live for a full thirty days after birth, in which case a person killing the baby could not be prosecuted for murder), if actually he is breathing on his own he must be treated as certainly being alive.

130 Is prosecutable in a Jewish court.

131 Is not prosecutable by biblical rules, only by the king’s police powers (cf. Sanhedrin 6:5 Note 75).

132 In Sabbath: Rav Hisda.

133 Babli 27b. According to this source, ben Dama was the son of R. Ismael’s sister.

134 Addition in the text here.

135 Eccl. 10:8. The fence is a stone wall without mortar with holes in which a snake may hide.

136 The mythical snake which seduced Eve.

137 Lev. 18:5.

138 A word of undetermined etymology which R. Ḥananel in his Commentary to Sanhedrin 21a explains by Arabic دوامة which means both a toupee and a mane; cf. Chapter 1, Note 105. Levy suggests Latin vellera crinis.

139 To make sure that the Gentile will not cut his throat. In general, for a man to look in a mirror to check on his grooming is rabbinically forbidden as “woman’s garb” (Deut. 22:5). Babli 29a.
Since they are (Sadducee) Jews, there is no reason to allow looking in a mirror.  

The Patriarch’s family, the official representative of the Jews vis-a-vis the Roman Government from the Severan Emperors to Theodosius II.  

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142 Tosephta 3:4.  

143 Greek κόμη.  

144 Not simply the Greek language which every trader had to master but Greek education, literature, and philosophy, which are intrinsically pagan. Babli Sotah 49b.  

145 Greek Πόλις, Πόλις.  

146 Then Jews who came to his place had to watch in a mirror what he was doing.  

147 It was stated: One does not buy from a Gentile who sells Torah scrolls, phylacteries, and mezuzzot.  

148 “It happened that a Gentile in Sidon was selling phylacteries, Torah scrolls, and mezuzzot. The case came before the Sages who ruled that one might buy from him.” Rebbi Samuel ben Nahman in the name of Rebbi Hama bar Hanina: This was a convert who returned to his origin.

A convert was a barber and astrologer. He saw in his astrology that Jews were spilling his blood. This only referred to his circumcision but when a Jew came to him to get a haircut, he killed him. How many did he kill? Rebbi Eleazar ben Rebbi Yose said eighty. Rebbi Yose ben Rebbi Abun said three hundred. At the end they prayed about him and he returned to his origin.

149 Tosephta 3:7, Babli Gittin 45b.

150 Since conversion to Judaism is to verify that all letters were written correctly but it is impossible to verify that the leather (or in later technology the parchment) was prepared correctly and that they were written by a Jew obligated to have one of these. The latter requirement is indispensable.
irreversible, even if he starts following pagan rites again he remains obligated to wear phylacteries, to affix a mezuzzah to his doorpost, and to study Torah, i.e., also empowered to write it.

Mishnah 3: The following Gentile properties are forbidden and the prohibition is of usufruct: Wine, and vinegar which originally was wine, and Hadrianic pottery, and heart-removed skins. Rabban Simeon ben Gamliel says, if the tear is circular they are forbidden, oblong permitted. Meat brought into a pagan Temple is permitted but what leaves is forbidden because it is sacrifice to the dead, the words of Rebbi Aqiba. It is forbidden to trade with those who go to ugliness.

151 One may assume that the Gentile before drinking the wine made a libation to the gods. If done for a full barrel, it makes all the wine in the barrel forbidden as מצר (Deut. 13:18) which biblically is forbidden for all usufruct.

152 Even though it is no longer wine and cannot be used for libations, since it remains usable the original prohibition is not removed.

153 Very porous earthenware which is soaked in wine to absorb it. It is taken on caravan trips to give a taste of wine to water taken on the trip.

154 Skins of the belly which show that the heart was removed before the animal was skinned. This is done only in pagan rituals; the animal including any parts not used in pagan worship is מצר.

155 The expression “sacrifice to the dead” is from Ps. 106:26; it describes all pagan sacrifices.

156 This is the meaning of the word in other contexts. The meaning here is not uncontested, cf. Notes 220 ff.
Halakhah 3: “The following Gentile properties are forbidden,” etc.

Rebbi Isaac bar Nahman in the name of Rebbi Joshua ben Levi: Bitter, sweet, and hot are not under the rules of being uncovered. Rebbi Simon in the name of Rebbi Joshua ben Levi: The hot, the bitter, and the sweet are not under the rules of being uncovered or under those of libation wine. Rebbi Simon explains: The hot, spice wine. The bitter, vermouth wine. And the sweet, cooked wine. Rebbi Joshua ben Zeidal had cooked wine which was left unsupervised in the custudy of a Gentile. He asked Rebbi Yannai ben Rebbi Ismael who said to him, so says Rebbi Simeon ben Laqish: The sweet is not under the rules of being uncovered or under those of libation wine.

Rebbi Yannai ben Rebbi Ismael fell ill. Rebbi Ze’ira, Rebbi (Joshua) [Hoshaia], Rebbi Abun bar Cahana, and Rebbi Hanianiah the colleague of the rabbis, went to visit him. They saw Rebbi Joshua ben Zeidal sitting there. They said, there is the master of the decision and the person of the happening, let us ask him. He said to them, so says Rebbi Simeon ben Laqish, the sweet is not under the rules of being uncovered or under those of libation wine. One said to him, maybe that of Rebbi Simeon ben Laqish is for argument’s sake? He told them, it is for action and you can rely on it. When (they got up) [returned], Rebbi Ila was standing with Rebbi Abun bar Cahana and told him, if you did not prefer decisions, is this not a baraita? As Rebbi Hyya stated, “why is cooked wine of Gentiles forbidden? Because it started out as wine.” Rebbi Yose said, the Mishnah says so, “wine and vinegar which originally was wine.”
This paragraph and many of the following have a parallel in *Terumot* 8:5 (Notes 82-111). At places the text here is a reformulation, not a direct copy, of the text there; though it is not excluded that both might represent the same original by two very different paths of copying.

In both Talmudim it is assumed that a snake will drink from uncovered unattended fluids and in the process poison the drink for humans. Then the drink cannot be used, neither can it be sold since this would be “putting a stone in the path of a blind person.” This makes uncovered unattended wine almost as forbidden as wine used for pagan practices.

“Libation wine” is the technical term for Gentile wine which was used for pagan libations or other pagan ceremonies and therefore is forbidden for all usufruct.

Latin (*vinum*) *conditum*.

Greek Ἰβισία, “wormwood, *Artemisia Absinthium*.”

The text in brackets is the reading of the text in *Terumot*; it is preferred since no Amora “R. Joshua” without patronymic is known.

The text in brackets is the reading of the text in *Terumot*, the one in parenthesis is the text here.

Babli 29b. The statement implies that Jewish cooked wine (pasteurized grape juice) cannot become forbidden after being handled by a Gentile.

But anything manufactured from wine that was not originally forbidden does not become forbidden; same consequence as in the preceding Note.

Rebbi Immi had guests. He said to them, if my cooked wine had not been left uncovered, would I not have served you? Rebbi Vivian said, bring it and we shall drink. He answered, he who wants to die should go and die in his own house.

Bar Yudani had uncovered spice wine. He went and asked the rabbis who forbade it. But did not Rebbi Isaac bar Nahman say in the name of Rebbi Joshua ben Levi: The hot, the bitter, and the sweet, are not under the rules of
being uncovered. The rabbis of Caesarea in the name of Rebbi Judah bar Titus: About one which consists of one to three parts ground [spices]¹⁶⁷.

They asked before Rebbi Abbahu, what is the rule for uncovered cooked [wine]? He told them, Rebbi Johanan had a problem with carenum¹⁶⁸ and you are asking me this? They asked Rebbi Isaac and he forbade it to them. Then Rebbi Abbahu remembered that Rebbi Johanan had said, it is forbidden¹⁶⁹.

¹⁶⁶ Terumot 8:5 Notes 91-94.
¹⁶⁷ One part spices for every three parts wine (one fourth of the volume) is the minimal concentration for which R. Joshua ben Levi’s rule may be applied.
¹⁶⁸ Latin carenum, Greek κάρονος, wine which by cooking has lost one third of its volume. Since the alcohol-producing bacteria die at 13% alcohol by volume, if the volume has shrunk by one third certainly all alcohol had evaporated and no alcohol was left in the fluid.
¹⁶⁹ R. Simeon ben Laqish’s statement is rejected in practice.

(Rebbi Jacob bar Aha, Rebbi Immi, in the name of Rebbi Eleazar.)¹⁷⁰ The barrel of Ben Netoza became uncovered. He went and asked Rebbi Abba bar Mamal, who told him, it is permitted. Rebbi Jacob bar Aha, Rebbi Immi, in the name of Rebbi Eleazar: if he was sleeping it is permitted¹⁷¹. Rebbi Hanina and Rebbi Joshua ben Levi, one said, if he was sleeping it is permitted; the other said, if he was sleeping it is forbidden. In is reasonable [to infer] that Rebbi Hanina said, if he was sleeping it is permitted, since Rebbi Eleazar everywhere relies on Rebbi Hanina¹⁷².

¹⁷⁰ In the Leiden ms. this sentence was deleted by the scribe; it does not appear in the prints. In Terumot, the corresponding sentence reads: Rebbi Jacob bar Aha, Rebbi Immi, in the name of Rebbi Eleazar: if he was entering and leaving it is permitted. This means that one may assume that no snake came out of its hole to eat from the food or drink the fluid if there was constant traffic in the room. The sentence really is needed to justify R. Abba bar Mamal’s ruling in the sentence after the next. Possibly it was deleted to indicate that the passage here should not be considered an
also is rejected in the Babli, 30a.

172 The frequent disagreements of R. Eleazar and R. Johanan in both Talmudim really are disagreements between R. Hanina and R. Johanan.

173 Rebbi Yose ben Shaul understands it from the following occurrence. It happened that a woman loved to do good deeds but her husband hated good deeds. There came a poor man and she gave him to eat. While he was eating she noticed her husband; she made him climb and hid him in the upper floor. She returned to her husband who ate and fell asleep. There came a snake and ate from what was before him; her husband awoke from his sleep and wanted to eat. The one in the upper floor started to talk. That means if he was sleeping it is permitted. It was used to it. But is it not forbidden because of being alone? For they committed adultery, blood is on their hands. Since he is not suspected of one he is not suspected of the other.

173 Terumot 8:5 Notes 96-101; the text is somewhat reformulated.
174 To warn the husband not to eat from the leftovers.
175 Without warning the husband would have eaten the poisoned food. This proves both that the rule is that one may eat food left while a person is sleeping nearby and that the rule is questionable, at least if there is a house snake familiar with the happenings there.
176 Ez. 23:37.
177 Since the guest saved the husband from danger to his life he is not suspected of wanting him to die; this also clears him of any suspicion of adultery (Babli Nedarim 81b).
A pious person happened to be insistent in the matter of uncovered [drinks]; he was smitten with a fever. They saw him preaching on the Day of Atonement with a flask of water in his hand. For medical reasons he would be permitted to take small sips of water on the day of the fast but it was extraordinary that he would have wanted to be seen with a flask of water which might lead people to believe that he did not fast. He took that chance rather than to risk leaving the water unattended.

It happened that a butcher in Sepphoris sold Jews carcasses and torn meats. Once on the eve of the day of Atonement before nightfall he drank a great deal of wine and became drunk. He went to the roof, fell down, and died. The dogs started to lick his blood; people came to ask Rebbi Hanina how to remove him from before them. He told them, it is written, holy people you shall be to Me; torn meat on the fields you shall not eat, you must throw it to the dogs. This one robbed the dogs and fed the Jews carcasses and torn meat. Let them alone, they are eating from their own.
drink it. He told him, it was uncovered. He answered, does not the Master of the Day exist? He had not finished tasting when he started shaking.

Rebbi Jeremiah in the name of Rebbi Hiyya bar Abba: All poisons cause scab but the poison of a snake kills. Rebbi Hiyya said, one is not asked about uncovered [drinks]. Rebbi Jeremiah asked before Rebbi Ze’ira; as master of the ruling he asked him.

Rebbi Ze’ira was dozing; he was sitting and eating in the evening. The light went out; he put his hand on the toman. They lit the light and found a snakelet like a hair curled around it. He said to it, evil one, was I not careful about you?

Rebbi Immi said, one has to be careful with what the creatures are careful with: It is forbidden to put coins in one’s mouth, a bread under the armpit, a dish under one’s bed, and to stick a knife in an etrog, or a knife into a radish. Rebbi Yose ben Rebbi Bun said, all sweat that exudes from a human is deadly poison except the sweat of the face.

Rebbi Yannai said, if you bit something off, you bit off soot. If anybody asked Rebbi Jonathan he told him: Am I the guarantor of your life? Rebbi Simeon ben Laqish said, if you sold yourself for the games, you would sell yourself for an excessive price; but here for a very cheap price.
Terumot 8:5 Notes 106-112. These are the last paragraphs having a parallel there.

182 Babli 31b: reptile poisons do not kill except that of a snake.

183 One should not ask a rabbi to authorize behavior that will endanger one’s health. Babli 30a.

184 How could R. Jeremiah have asked if he is the person who teaches that one does not ask? He asked in order to be able to formulate his rule.

185 A vessel containing half a log (a hemina, half a sextarius) of wine. Since the room was dark he held that the presence of a human in the room would not deter a snake from drinking the wine. Babli 30a.

186 If you take chances with your health you may lose it.

187 Latin ludi; as a gladiator.

Rebbi Assi, Rebbi Johanan in the name of Ben Bathya: If libation wine fell into a cistern, it should be sold entirely to a Gentile except the value of the libation wine contained in it. Rebbi Assi in the name of Rebbi Johanan: Undetermined wine of a Gentile is forbidden but does not make impure. If he deposited it with him it is forbidden for drinking but permitted for usufruct. Rebbi Ze‘ira asked before Rebbi Yasa, how? If he segregated it? He told him, if he deposited it. Rebbi Abbahu came in the name of Rebbi Johanan: There are three kinds of wine. If he saw the Gentile pouring a libation, it is certainly pagan worship and induces severe impurity like a reptile. Gentiles’ undetermined wine is forbidden but does not cause impurity. If he deposited with him with one seal it is forbidden to drink and permitted for usufruct. Rebbi Jeremiah said before Rebbi Ze‘ira: See what he said! He only said with a seal. Therefore without a seal it is forbidden for drinking and usufruct. Rebbi Eleazar instructed: if it was segregated; Rebbi Ze‘ira enjoyed it.
190 This is the Babli’s name of R. Yasa who later is quoted with his Galilean name. Note also in the first part Babylonian สะสม for Galilean מסכם.

191 This is Rabban Simeon ben Gamliel’s opinion in Mishnah 5:13, opposed by the anonymous majority which declares the entire cistern as forbidden for usufruct. The Babli (74a) agrees that practice has to follow Rabban Simeon ben Gamliel.

192 Wine about whose previous use nothing is known.

193 In this sentence, “forbidden” means “forbidden for usufruct”.

194 Wines produced by Jews if handled by Gentiles are permitted to drink only if they are guarded by an inner seal and an outer seal which make it practically impossible for the Gentile to get to the wine without being detected. If there is no double seal, the wine becomes forbidden to drink. The problem then is to determine when Jewish wine handled by a Gentile or in the custody of a Gentile is permitted for usufruct.

195 In the first case, it was specified that the Jew’s closed wine amphora has to be kept at a specified place, with the Jew being able to inspect the place and see that the condition was kept. In the second case the amphora is to be kept by the Gentile in his wine cellar, not separate from his own wine amorphas.

196 In rabbinic teaching in many aspects pagan worship induces impurity much more severe than that of a dead reptile, cf. Mishnah 3:13, Šabbat 9:1. In the Babli, 30b/31a, the formulation is more correctly “severe impurity”.

197 Since R. Eleazar confirmed that he was correct in his question to R. Yasa, against R. Yasa. Since R. Eleazar died before R. Johanan, the entire discussion must be dated to the generation after R. Johanan, trying to understand the latter’s teachings.

There, we have stated198: “With a Gentile, it is like his produce. Rebbi Simeon says, it is demay.” Rebbi Hananiah asked before Rebbi Mani: Does it mean, really like his produce? Freeing what would be tevel at another place? He said to him, for all that is in it. Rebbi Hanina was uselessly opposing him199.

If he deposited with him with a seal200. Rebbi Hananiah and Rebbi Mana, one says, prohibited201, and one says, permitted. Where do they disagree? For usufruct. But for drinking it is forbidden.
198 Mishnah *Demay* 3:4. *Demay* is produce bought from a Jew who is suspected of not following rabbinic rules. He is presumed to have given heave, which is a small amount and the violation of whose prohibition is clearly a biblical deadly sin, but is suspected of neglecting all other rules (cf. Introduction to Tractate *Demay*). The anonymous majority holds that Gentile produce in the Land of Israel is free from the rules of heave and tithes. (For the opinion of R. Simeon, cf. *Demay* 3:4 Note 91).

_Tevel_ is Jewish produce from which no heave or tithes have been taken, forbidden for any Jew after storage.

199 The paragraph has a parallel in *Demay* 3:4, Notes 104-107. In the opinion of the anonymous Tanna, since the obligation of _tevel_ starts only after storage, initial storage by a Gentile removes the obligation completely.

Since R. Mani (Mana I) was an Amora of the first generation, the name has to be Hanina in both occurrences unless one reads Mana (II) and Hanania in all occurrences here and the next paragraph.

The placing of the quote here can only be understood with the help of the Babli (31a). In the preceding paragraph it was established that the Jew’s wine stored with the Gentile under certain conditions remains permitted for usufruct. Then the question is why wine does not follow the rules of produce, that if stored by the Gentile it follows the rules of Gentile produce. While for grain this implies release from the obligations of heave and tithes, for wine it should imply prohibition of all usufruct. The answer is given in the next paragraph (having no parallel in the Babli) that the person who frees grain from heave and tithes forbids wine stored with the Gentile for usufruct.

200 A barrel or bottle of wine, deposited with a Gentile without being held at a separate place. As noted earlier, it remains permitted as a drink for Jews only if it is secured by a double seal. The question remains about its status if it is secured only by a single seal which makes it unlikely but not impossible for the Gentile to access the wine.

201 R. Mana
permitted with a single seal. Rebbi Jacob bar Aha, Rebbi Simeon bar Abba, Rebbi Eleazar in the name of Rebbi Hanina; Rebbi Abba, Rebbi Hyya in the name of Rebbi Johanan; Rebbi Ze’ira in the name of Rebbi Joshua ben Levi: Everything is permitted with a single seal except wine.

202 Mnemonic marks composed of initial letters of the items to be remembered; pronounced havit and hampag. Babli 39a/b.

203 If it is not directly visible that it is a piece of a fish with fins and scales, permitted as food.

204 Woolen threads for use in the sīsit, which by tradition must be dyed with the blood of a marine snail which can easily be counterfeit by (much cheaper) indigo, and therefore needs certification. (In modern Hebrew zlkz is light blue but classically very dark blue.)

205 A medical concoction on vegetal basis but for which (forbidden) wine might have been used.

206 Latin muries; this also might have been made with wine, even though using only salt and water is cheaper.

207 Babli 31a.

And Hadrianic pottery.” Rebbi Ze’ira in the name of Rebbi Jeremiah: does practice follow Rebbi Meïr? As it was stated, “Hadrianic pottery is prohibited and its prohibition is of usufruct, the words of Rebbi Meïr, but the Sages say, its prohibition is not of usufruct.” Rebbi Jeremiah asked before Rebbi Ze’ira: what is the status of the cloth about which we stated here? He was offended by this and told him, even for him who permits there, here it is forbidden. There, the prohibition is not visible, here the prohibition is visible. May one use it to support the legs of a couch?

Rebbi Eleazar says it is permitted, Rebbi Johanan says it is forbidden.

208 The origin of this text is in ‘Orlah 3:2, Notes 64-76, since in the text “here” means ‘Orlah and “there” Avodah zarah. Nevertheless the order of sentences is too different and the text here cannot be considered as simply a copy of the text there.

209 Probably this should read: Ze’iri in the...
name of Rav Jeremiah.
210 Cf. Tosephta 4:8. Since the majority opposes R. Meïr, it is difficult to understand why the Mishnah should support a minority opinion as practice.
211 In the editio princeps: R. Eliezer.
212 This shows that the paragraph belongs to ‘Orlah, the treatise about the prohibition to use the fruits of a tree in the first three years of its growth. Mishnah ‘Orlah 3:1 states: “Cloth dyed with orlah shell shall be burned.” R. Jeremiah asks, why do the Sages hold that libation wine absorbed in pottery is not forbidden for usufruct but dye from orlah shells (e.g. walnut shells) absorbed in cloth make the entire cloth forbidden for usufruct?
213 They used to put the legs of the couch in water containers to shield the sleeper from snakes and other crawling animals.
214 In ‘Orlah, the attributions are switched. The Babli 32a cannot decide between the two traditions.

“And heart-removed skins.” Rebbi Jeremiah in the name of Rav: Practice follows Rabban Simeon ben Gamliel215.

How does he do it? He tears its heart out from the living animal for pagan worship. How does one know216? Rebbi Huna said, if it is torn out from the living animal it rebounds and becomes circular; after slaughter it becomes stretched. Rebbi Yose said, one can infer from this that if he slaughtered one sign, even though one says that nothing living can become prohibited, here it becomes prohibited217.

215 In the Babli 32b this is a tradition of Samuel. R. Jeremiah here is the first generation Babylonian.
216 Which skins were used in pagan ceremonies and are forbidden?
217 Even an animal which was worshipped as a divinity is not forbidden for usufruct (it is forbidden as a sacrifice.) If in an act of pagan worship only the windpipe of an animal is cut but not the esophagus and the carotid arteries, the animal is not immediately killed. But since it is for pagan worship it is not less than tearing the heart out from a living animal which makes the entire carcass forbidden for usufruct.
Meat brought into a pagan Temple is permitted.” Rebbi Abba, Rebbi Hiyya in the name of Rebbi Johanan said, to exclude the statement of Rebbi Eliezer, since Rebbi Eliezer says that the thoughts of a Non-Jew are about pagan worship.

“But what leaves is forbidden.” Rebbi Abinna in the name of Rav Jeremiah: When he introduced it inside the lattice railing. But if he did not introduce it inside the lattice railing it is permitted. That is about a pagan Temple which has a lattice railing. But if a pagan Temple has no lattice railing, the entire building is considered lattice railing.

218 Mishnah Hulin 2:7. He holds that even if a Jew correctly slaughters an animal for a Gentile the meat is forbidden since the Gentile owner in his mind dedicates the slaughter to his god. Practice follows R. Yose who holds that only the slaughterer’s intentions have any influence on the process of slaughtering. Babli 32b.

219 Greek κυρκλίς, mostly used in the plural Greek κυρκλίδες, Latin cancelli, “lattice gates” (of Temples, eic.) Babli 51b.

Those who go in ugliness.” Rebbi Hiyya in the name of Rebbi Johanan, θόρυβος. One brings a large idol to a small idol. Some state that he who says ze’txz, idols. He who says ze’a tz, also Ze’artz. He who says θόρυβος.

“But those who return are permitted.” Rebbi Abinnas in the name of Rav Jeremiah: If their returning is not like their going. But if their returning is like their going, also those returning are forbidden.
This text, תַּקְטָרִית, is otherwise found only in Mishnah texts of the Maimonides tradition. It seems preferable to the common text תַּקְטֶרִית.

“Tumult.” The reference is to pagan processions.

There seems a sentence to be missing, “some state תַּקְטֶרִית.” This is a word תַּקְטֶרִית both in biblical Hebrew, “brood” (Num. 32:14), as also in rabbinic, “culture.” For compare Greek πράσινα “table” including table dedicated to divinities with offerings of food (E. G.).

A word derived from a root תַּקְט, used either for household gods or dolls (1S. 13,16). Arabicと言って“to live the good life”.

To be vocalized פְּדָה.

A quote from the Mishnah in all versions except the Yerushalmi separate Mishnah.

Which were not thoroughly cleansed to remove all traces of use for Gentile wine.

The wine may be used for trade; it is forbidden for Jews to drink.

Mishnah 4: Gentiles’ wine skins and jugs containing an Israel’s wine are forbidden and their prohibition is one of usufruct, the words of Rebbi Meïr; but the Sages say that their prohibition is not one of usufruct.

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Halakkah 4: “Gentiles’ wine skins and jugs,” etc. Rough Gentile wine skins are permitted; tarred ones are forbidden. If a Gentile made it and insulated it while a Jew was watching, one may fill it with wine without worry.” Should one not be afraid that possibly he made a libation? He will
not usually make a libation in repugnant circumstances\textsuperscript{231}. Then even if no Jew was watching? I say, maybe he switched\textsuperscript{232}.

\textsuperscript{228}“Gentile jugs, new ones are permitted even tarred; old are forbidden even if not tarred.” Here you say tarred are permitted and there you say tarred are prohibited. Rebbi Abbahu said, I investigated tarring of jugs; they do not use vinegar while tarring\textsuperscript{233}.

\begin{itemize}
\item [228] Tosephta 4:10; Babli 33a.
\item [229] The interior surface is leather only; it was not smoothened by tar.
\item [230] It is difficult to see how the scribe could have written \textsuperscript{228}“tarred them” in the other sources; it may be better to accept the word as it stands and read it as \textsuperscript{228}“to protect, defend something”, to protect the skin against being penetrated by the wine.
\item [231] Even if the pitch is diluted with vinegar when applied to the skin, the bad smell does not invite making a libation. One assumes that the Jew has provided the vinegar which was made from kosher wine.
\item [232] Then one has no control over the vinegar which was used.
\item [233] There is no reason to forbid new jugs.
\end{itemize}

Rebbi Jacob bar Aha in the name of the rabbis: If somebody puts wine which was forbidden to drink but permitted to use into jugs, the jugs become like the wine\textsuperscript{234}. If he removed it and put new wine\textsuperscript{235} into them, the wine becomes like the jugs\textsuperscript{236}. If he removed it and put new wine\textsuperscript{235} into them, the wine is forbidden but the jugs permitted\textsuperscript{237}. Why “forbidden to drink but permitted to use”? Because of Rebbi Meïr who said, forbidden to drink and for use\textsuperscript{238}.

\begin{itemize}
\item [234] It cannot be exactly like the wine since one cannot drink the solid jug. But it means that the jug is permitted for usufruct but will make any wine which touches its inside forbidden to drink.
\item [235] Kosher wine.
\item [236] Forbidden to drink but permitted for usufruct.
\item [237] The first wine was forbidden. If the jug was filled twice with kosher wine, it has been cleansed from the first contamination; the third time the kosher wine remains
\end{itemize}
kosher.  

238 He will reject this way of cleansing the jug.

Rebbi Abba said, when Rebbi Aqiba went to the tar workers, they came and asked him, how does one purify Gentiles’ jugs? From the following I taught them, since they are permitted if not tarred, if they were tarred but the pitch was shaved off not so much more? But when I came to my colleagues they told me that they are absorbing because of the pitch. 239

228,240 “If the Gentile filled it with water, the Jew fills it with water; then he fills it with wine without worry. It the Gentile filled it with fish fluid or fish sauce the Jew may fill it with wine. If the Gentile filled it with wine, the Jew fills it with fish fluid or fish sauce, then he fills it with wine without worry.”

Rebbi Johanan went to meet Rebbi Yudan the Prince at Acco. They came and asked him, how does one purify jugs? He said, from the following I taught them, since after the Gentile filled it with fish fluid or fish sauce the Jew fills it with wine. Rebbi Yasa in the name of Rebbi Johanan, if he puts them into the fire not so much more? Rebbi Hiyya in the name of Rebbi
Johanan, if he strips off the tarring\textsuperscript{245} not so much more? Do they stand this? If they stand it, they stand\textsuperscript{246}.

Untarred jugs\textsuperscript{247}, Rebbi Assi\textsuperscript{190} said, they are forbidden\textsuperscript{248}, Rebbi Immi said, they are permitted. Rebbi Jacob bar Aha said, Rebbi Assi questioned: do we say that a tankard does not absorb\textsuperscript{249}? Rebbi Abba said, Rav Sheshet asked, could we say that a vessel for urine does not absorb?

\textsuperscript{239} They hold that wine absorbed in earthenware which had been tarred will not be removed even if the tar was removed and the vessel cleansed with water for three days as explained at the end of the Halakhah.

\textsuperscript{240} A very different version in the Babli, 33a, bottom.

\textsuperscript{241} יָרָּה is any fluid obtained by squeezing something, whether fruit, meat, or in this case fish. 

\textsuperscript{242} The smell of the fish will obliterate any taste that might have remained of the Gentile’s wine.

\textsuperscript{243} Greek ἀπαντάω “to meet” with Atamaic prefix ḫ.

\textsuperscript{244} This is the quote from the previous Tosephta. Of R. Johanan’s argument there exist two versions, one by R. Yasa (reported in the Babli 33b), the other by R. Hyya bar Abba.

\textsuperscript{245} By burning of the tar.

\textsuperscript{246} Both R. Yasa and R. Hyya require that the earthenware jug be treated with fire; either fired in its entirety or fire applied to the tar lining. It is agreed that there is a risk that the vessel will burst in the fire, but if it withstands the process it may be used to store Jewish wine.

\textsuperscript{247} Which had been used by Gentiles.

\textsuperscript{248} They cannot be cleansed to become usable.

\textsuperscript{249} Both R. Assi and Rav Sheshet question the position of R. Immi.
Rebbi Jacob bar Aha, Rebbi Simeon bar Abba in the name of Rebbi Hanina: One fills Gentiles’ jugs with water three days from time to time\textsuperscript{250}. Rebbi Jacob bar Aha said, Rebbi Assi\textsuperscript{190} asked, does one do this? Rebbi Yose from Malhā brought a case before Rebbi Mana. He told him, that is what happened; he answered that it is permitted. Is that to start? He told him, it is forbidden\textsuperscript{251}. Rebbi Jeremiah went to Goblana; he instructed about large cups\textsuperscript{252} that one fills them with water three days from time to time\textsuperscript{253}.

An Aramean’s\textsuperscript{254} leather bag split; the Jew received it into his\textsuperscript{255}. The case came before the rabbis who said, one fills them with water three days from time to time\textsuperscript{256}.

Rebbi Yasa\textsuperscript{257} went to Tyre. He saw them\textsuperscript{258} tarring small leather bags and Jews bought them. He asked, who permitted you? They asked Rebbi Isaac and Rebbi Mani\textsuperscript{259}, who prohibited it.

\textsuperscript{250} One fills the vessel with water, lets it stand for 24 hours, pours the old water out and refills with new, and repeats twice.
\textsuperscript{251} The method is a short-cut which cannot be used generally; if people used it without asking one cannot prohibit the vessels cleansed in this way.
\textsuperscript{252} Latin \textit{patera} “flat dish or saucer; libation bowl” or Greek \textit{ποτηριον} (cup, receptacle for offerings in temples; cup in the Eucharist) (Kohut).
\textsuperscript{253} He sees nothing wrong with the method and recommends it publicly. He is quoted in the Babli, 33a, in the same sense and ascribes the ruling to R. Immi.
\textsuperscript{254} A Non-Jew, not necessarily a pagan; cf. Chapter I, Note 177.
\textsuperscript{255} The Aramean’s wine-skin started leaking; a Jew saved his wine by receiving it into his own wine-skin. The Gentile’s wine certainly is forbidden to the Jew; the question is how the Jew can regain the use of his skin after the wine was transferred to the Gentile’s vessel, without ruining the vessel by using it for fish sauce.
\textsuperscript{256} Following R. Jeremiah, against R. Yasa (Assi).
\textsuperscript{257} In the entire Halakhah he opposes cleansing Gentile wine vessels for use by Jews.
\textsuperscript{258} Gentile workers.
\textsuperscript{259} The earlier authorities all forbid refurbishing wine skins and jugs; the later generations do permit it.
Mishnah 6⁴⁶⁰ Gentiles’ grape kernels and skins⁴⁶¹ are forbidden and the prohibition is of usufruct, the words of Rebbi Meïr. But the Sages say, moist they are forbidden, dry permitted.

260 In the Mishnah this text follows Mishnah 5 which belongs to Halakhah 6. The sequence of the Halakhah also is the one in the Babli and Maimonides’s Mishnah Commentary.

261 Which remain after the production of wine.

Halakhah 5: “Gentiles’ grape kernels and skins,” etc. Rav Sheshet in the name of Rav: Moist they are forbidden even for usufruct; dry they are permitted even to eat⁴⁶². But did we not state⁴⁶³, “it does not become libation wine until it descends into the cistern⁴⁶⁴”? Rebbi Abba in the name of Rebbi Judah: The Mishnah is about one who lowers them into the cistern⁴⁶⁵.

There we have stated:⁴⁶⁶ “And so it is with new solid matter of olives; but old one is pure.⁴⁶⁷ What is new? Within twelve months. Old, after twelve months⁴⁶⁸.

262 In the Babli, 34a, ascribed to the Galilean R. Johanan.
263 Mishnah 4:8.
264 Grape juice pressed out of grapes does not become forbidden before it is collected in a vat below the wine press. Since kernels and skins are kept in the press they should not become forbidden.
265 The only skins forbidden are those put in the fermenting wine to give it red color.
266 Mishnah Kelim 9:5.
267 If the solid remnants in the olive press which remain after the production of oil are impure, they impart impurity only as long as they are somewhat moist. Once they are stone dry they do no longer impart impurity to clay vessels.
268 The same is true for grape skins used for the production of Gentile wine. Once they are completely dry, having dried out for a full 12 months, they are forbidden no longer; Babli 34a (attributed there to Samuel).
Mishnah 5: Fish sauce, cheese, and theriac of Gentiles are forbidden and the prohibition is of usufrect, the words of Rebbi Meir. But the Sages say, their prohibition is not of usufrect.

269 The reasons for prohibiting Gentile cheese will be discussed in the next Halakhot.

270 Greek οἶνος, scil., φάρμακα “medicines made from poisonous beasts (οἶνος)” It is possible however that

is an error for בֵיתִיָּן, which in the Mishnah in the Bubli and the independent Mishnah mss. characterizes the kind of cheese which if made by Gentiles is forbidden for usufrect; cf. Note 431.

Halakah 6: “Fish sauce, cheese,” etc. Wine in muries, Rebbi permits but Rebbi Eleazar ben Rebbi Simeon forbids.” Therefore, if somebody transgressed and put it in, Rebbi forbids it to laymen but Rebbi Eleazar ben Rebbi Simeon permits it to laymen.” Rebbi Mana bar Tanhum...
asked: Following him who permits for laymen, why is muries of Gentiles forbidden\textsuperscript{272}? Rebbi Jeremiah in the name of Rebbi Hiyya ber Abba, it is forbidden as being cooked by Gentiles\textsuperscript{273}. But did not [Rebbi Yose]\textsuperscript{274} state: “From a professional\textsuperscript{275} it is permitted, from a non-professional it is forbidden.” From a professional it is permitted, is that not if it is not cooked\textsuperscript{276}? Similarly, from a non-professional it is forbidden even if cooked. What about it? If it is to remove contamination it is forbidden because of pagan worship\textsuperscript{277}. This implies that usufruct of pagan worship is forbidden, usufruct of heave is permitted\textsuperscript{278}. Rebbi Johanan bar Madia said, following him who said from a professional it is permitted, only if he knows him\textsuperscript{279}. Rebbi Johanan and Rebbi Eleazar. One says because he diminishes its volume, the other says because he reduces the number of drinkers\textsuperscript{280}. We do not know who said what. Since Rebbi Johanan said, Rebbi Jehudah inverted his reasoning but Rebbi Eleazar said, it was not inverted, there for the Cohen, here for the owners, it follows that Rebbi Johanan said because he reduces the number of drinkers.

\textsuperscript{271} From here on, there exists a Genizah text (1) which differs from the Leiden text mainly in its spelling. The origin of the entire Halakhah is Terumot 11:1 (n, Notes 11-23). However, the first paragraph is a reformulation and explanation of that text as noted by S. Lieberman (Tosefta kiFshutah Terumot p. 454). The second paragraph also belongs to Terumot 2:5 (n, Notes 118-119).

The quote refers to a baraita similar to Tosephta Terumot 9:6. According to Rebbi one puts wine into muries to improve its taste. This is a legitimate use of wine as food; therefore the Cohen may use his heave wine, sanctified food which has to be consumed in purity as a religious duty, to improve his muries. On the other hand, since the improved taste is noticeable, the entire muries now must be eaten under the rules of heave.

R. Eleazar holds that wine is used in muries only to clean it from contaminations. To use heave wine for this purpose is sinful since it destroys sanctified drink. But if heave wine was used in this illegitimate way, it was destroyed and therefore lost its sanctity. The muries is profane and may be eaten by lay people in impurity. 272 Since the amount of any forbidden wine left in the sauce would be insignificant. If the trace of heave wine is permitted to impure laymen, should not a trace of Gentile wine be permitted to everybody? 273 Whose general prohibition is discussed in Halakhah 9. 274 Added from 1 and the Terumot texts. 275 This is the reading of the Leiden ms., Babli 34b, and Tosephta Terumot 4:13. The
Leiden ms. in *Terumot* reads “trustworthy”, which in *editio princeps* became an unintelligible “hot”. The reading of ב אפשת “craftsman” with the Leiden ms. here or אפשת “trustworthiness” with the text in *Terumot*.  

276 Since otherwise it still would be forbidden as Gentile cooking even if one was sure that no wine was used in its production.  

277 In industrial production a Gentile might use wine of which a libation was made.  

278 Since usufruct of pagan wine is forbidden, the rules of declaring an amount as insignificant do not apply; the most minute amount makes the entire product forbidden whereas less than \( \frac{1}{2} \% \) of heave in food leaves it permitted for everybody.  

279 In modern terms, if the *murie* carries a rabbinic certification that no wine was used in its production.  

280 This refers to Mishnah *Terumot* 11:1: “One may not cook heave wine because he diminishes its volume; R. Jehudah permits since he improves it.” But some people do not want to drink alcohol-free cooked wine. The problem really is whether the vintner is permitted to cook his wine before he gave heave since (a) with the diminution in volume of the wine he diminishes the volume of heave to be taken and (b) not every Cohen may be willing to accept cooked heave wine.

**Mishnah 7:** Rebbi Jehudah said, Rebbi Ismael asked Rebbi Joshua when they were walking on a road, why did they forbid Gentiles’ cheeses? He told him, because they make them with stomach of cadaver. He answered him, is not the stomach of an elevation offering more serious than the stomach of a cadaver and they said, a Cohen who is not repulsed may burn it raw; they did not agree to this but said one has no usufruct but does not commit larceny.

281 They were forbidden in Mishnah 6 for all usufruct without any obvious reason.  

282 The rennet is taken from the stomach contents of cattle killed by Gentiles and therefore automatically have the status of cadavers. Since the rennet causes the milk to curdle, its addition cannot be said to be insignificant. Therefore one understands...
that the cheeses are forbidden as food. Since the rennet is produced from an animal and cheese (including kosher cheese made by Jews) is made by cooking milk with rennet, it could be forbidden for all usufruct as meat cooked in milk following R. Simeon ben Iohai (Mekhilta dR. Ismael Masekhta deKaspa 20).

283 An elevation offering is burned completely on the altar. The stomach contents (and the contents of its intestines) are not burned; the innards have to be washed before being put on the altar (Lev. 1:9). Eating from a cadaver is a simple infraction which requires no sacrifice; eating from an animal dedicated as elevation sacrifice is both an infraction and larceny requiring a sacrifice.

284 The Cohen may eat the stomach contents raw since they are considered excrement; the rennet therefore cannot be considered meat and the Gentile’s cheese should be permitted even as food! For the expression “to burn” for “to slurp” see Note 321.

285 While the previous statement is essentially correct there is a (customary or rabbinic) rule that it would not be decorous to do so; one refrains from using any part of the animal (except the hide given to the priests, Lev. 7:8) as a practical rule.

286 As a rule of biblical law. Therefore Gentiles’ cheese could at most be rabbinically forbidden.

Halakhah 7: “Rebbi Jehudah said, Rebbi Ismael asked Rebbi Joshua,” etc. Rebbi Jacob bar Aha, Rebbi Simeon bar Abba in the name of Rebbi Joshua ben Levi: Because [most] calves there are slaughtered in the name of pagan worship. Rebbi Johanan heard this and said, my teacher taught us well, since if one slaughters for pagan worship even its excrement is forbidden. Rebbi Johanan asked, if one found a ring in it? Rebbi Yose said, a ring is recognizable; excrement is part of its body.

287 Added from the Genizah text, necessary for syntactic reasons.

288 This shows that the Mishnah underlying this Halakhah is not the one given in the separate Mishnah in the Yerushalmi but the one found in the Babli and Maimonides: R. Meïr declares Bithynian Gentile cheese as forbidden for usufruct. Babli 34b.

289 Therefore even R. Ismael must agree that these cheeses are forbidden; but they should be forbidden for usufruct.
290 It never was part of the animal and did not become forbidden by its slaughter for idolatry.

291 Rebbi Hiyya bar Abba in the name of Rebbi Johanan: At first they were saying, one curdles neither with the stomach content of the carcass nor with the stomach contents of the Gentile. They changed to say, one curdles with the stomach content of the carcass but not with the stomach contents of the Gentile. Rebbi Abba bar Zava, Rebbi Samuel bar Rav Isaac asked: Does this negate the declaration of Rebbi Eliezer, since Rebbi Eliezer said, the thoughts of the Non-Jew are about pagan worship? Rebbi (Assi) [Yasa] came in the name of Rebbi Johanan: Originally, they said, one does curdle neither with carcass stomach contents nor with Gentile’s stomach contents. They changed to say, one does curdle with carcass stomach contents and with Gentile’s stomach contents. The language of a baraita supports Rebbi Hiyya.
bar Abba: Stomach contents of a Gentile or a carcass is forbidden following the original teaching. (The stomach contents of a torn animal which suckled from a qualified one are permitted following the later teaching; the stomach contents of a qualified animal which suckled from a torn one are forbidden following the later teaching.) [The stomach contents of a qualified animal which suckled from a torn one are forbidden following the former teaching, and the stomach contents of a torn animal which suckled from a qualified one are permitted following the later teaching.] And even if the House of Shammai would argue like the House of Hillel in the first teaching, an egg is a growth of its body; the contents of the stomach come from the outside. It parallels what Rebbi Yose ben Rebbi Abun said in the name of Rebbi Johanan: It happened to the son[s] of (Rebbi) Jehudah ben Shamua that wolves tore more than 300 of their flock. The case came before the Sages who permitted their stomach contents. They said, an egg is a growth of its body; the contents of the stomach come from the outside.

291 The text is complete in א א, Note 293.
292 This also was the text of א before correction. Therefore it is a traditional text rather than a scribal error.
293 For this paragraph there exist two additional witnesses, the Leiden ms. in Besah 1:1 (60a ll. 39-54, א) and a Genizah text (Yerushalmi Fragments, pp. 156-157, א) of the same. The source clearly is the Besah text even though the argument is from Avodah zarah and the reference to Besah is a side remark.

“Gentile’s stomach content” naturally means “stomach content of animal slaughtered by a Gentile.”
294 An animal which was not slaughtered following the rules of ritual slaughter. whose flesh therefore is forbidden as meat.
295 The Besah text seems better: Does this (i. e., the prohibition of Gentile rennet) follow R. Eliezer (whom practice does not follow in general) since it treats Gentile rennet as more problematic than the one derived from a carcass? Since here practice is said to follow R. Eliezer, the tradition seems questionable; one has to search for parallel traditions either to confirm or to reject.
296 The Babylonian form of the name (in parentheses) has to be deleted in favor of the Galilean form used in the three parallel sources [in brackets].
297 To be added by the unanimous testimony of the other three sources and the later arguments.
298 The ms. text (in parentheses) is inconsistent. It has to be replaced by the text of the other three sources [in brackets] which is consistent with R. Johanan’s statement in both versions since for dietary laws a “torn” animal has the same status as a
A “torn” animal is one of which a vital organ is impaired or defective, the most common one being tuberculous lesions of the lung. If a cow is known to suffer from a defect which makes it “torn”, its milk is forbidden as drink but as stomach contents it becomes excrement and is no longer forbidden. (Karaites deny the existence of internal terefa and prohibit as torn only the victims of predator attacks as described by the verse, Ex. 22:30.)

This now connects the discussion with Mishnah Besah 1:1 which states that the House of Shamai permit the use on the holiday of an egg laid on that day while the House of Hillel forbid it. The problem is to understand the position of the House of Hillel since the preparation of food is permitted on a holiday (Ex. 12:16). According to the Babli and one opinion in the Yerushalmi the prohibition applies only to eggs laid by chickens raised to produce eggs. Then the mother was not food at the start of the holiday. While the egg is food according to everybody, for the House of Hillel it cannot change its character from non-food to food on the holiday. Then the question is raised why milk which is prohibited as food before being ingested by a ruminant becomes permitted by the animal’s stomach. In this question, the revised ruling in matters of rennet would agree with the stance of the House of Shamai. But the answer is that the two cases cannot be compared; the stomach contents of an animal never were part of the animal and do not have the latter’s status.

The plural is attested to in the three parallel sources and required by the context.

The parallels unanimously state the name as Jehudah ben Shemu`ai without a rabbinic title.

The latter teaching which permits rennet from animals prohibited as meat is confirmed by a ruling in an actual case.

Mishnah 8: He gave a second argument and said, because they curd it with stomach content of calves for pagan worship. He retorted, then why did they not forbid it for usufruct? He deflected him to an other subject and said to him, my brother Ismael, how do you read, for your (m.) friends are better than wine, or for your (f.) friends are better than wine? He told
him, *for your (f.) friendship is better*. He answered, it is not so since the next verse implies it, *by the scent of your (m.) good oils*.

303 R. Joshua.
304 R. Ismael.
305 As the Babli explains, since it was a new purely rabbinic restriction introduced after the destruction of the Temple, he did not want to disclose the reason.

306 *Cant. 1:2*. Since the Song is read as a dialogue between God (m.) and Israel (f.), the theological interpretation depends on the vocalization which was not directly expressible before the invention of vowel signs. The interpretation given in the Halakhah requires the identification of *דרים* as “friends, lovers” rather than “friendship, love.”

307 *Cant. 1:3*. As in most cases, the proof is from the part of the verse not quoted. The verse ends: *therefore girls love you*. Since the Song of Songs clearly celebrates heterosexual love, the speaker must be a female addressing a male.

The following interpretation of the Mishnah follows S. Naeh. There are two problems. What is the relationship of the Mishnah 7 and the first part of Mishnah 8 to the second part of Mishnah 8? Also the discussion in Mishnah 8 does not seem to make sense. Since *Cant. 1:2* starts: *May he kiss me with kisses of his mouth*, it should be clear that the speaker is the female. Why should R. Ismael, who everywhere else requires that a verse be interpreted according to its plain sense, suddenly switch speakers in middle sentence? Why does R. Joshua refer to 1:3, when a referral to 1:2 would be more appropriate? The unvocalized text of 1:2-3 has a chiastic structure: It starts clearly with the masculine, has a middle section which could be read in the masculine or the feminine, and ends again with the masculine.

R. Ismael proves convincingly that there is no biblical basis for the prohibition of Gentile cheese; it is purely rabbinical. It can be regarded as a “fence around the law” only with regard to the prohibition of intermarriage, since it is designed to make social intercourse between Jews and Gentiles as difficult as possible. Then the question arises as to the status of the much more important prohibitions oil and wine. The prohibition of oil clearly is rabbinical even though it is mentioned as particularly meritorious in Daniel; no reason could be found in dietary laws to prohibit Gentile cold pressed virgin olive oil. While wine actually used for pagan libations is biblically forbidden, the extension of the prohibition to almost any wine moved in any way by a Gentile, even one adhering to a faith not practicing libations (or even prohibiting the drinking of wine), must be considered rabbinical. Now wine in mentioned in v. 1:2 and oil in v. 1:3. The discussion between Rabbis Ismael and Joshua is about the status of the prohibitions of wine and oil.

As mentioned in Note 306, any rabbinic reference to the Song of Songs

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unquestionably reads sentences put into the mouth of the female as coming from the congregation of Israel (as represented by its rabbinical leaders) and that of the male as referring to God. R. Joshua asks R. Ismael about his opinion about the actual rules referring to Gentile wine. The latter, by putting the reference to wine in the mouth of the male, asserts that the prohibition of Gentile wine essentially is God’s decree, is biblical. R. Joshua, the overriding authority, informs him that the references to wine and oil have equal status; since the prohibition of oil in almost all cases has no pentateuchal basis, the prohibition of wine also in almost all cases is purely rabbinical (Cf. Halakhah 5:4, Note 67).

Halakhah 8: “Because they curdle it,” etc. 308 The colleagues in the name of Rebbi [Johanan]: The words of the Sopherim are related to the words of Scripture and are (more pleasant than) [pleasant like] the words of Scripture; your throat is like good wine. Simeon bar Abba in the name of Rebbi Johanan: The words of the Sopherim are related to the words of Scripture and are more pleasant than the words of Scripture, for your friends are better than wine. Rebbi Abba bar Cohen in the name of Bar Pazi: You may know that the words of the Sopherim are more pleasant than the words of Scripture, because if Rebbi Tarphon did not recite at all he would only have transgressed a positive commandment. But because he transgressed the words of the House of Hillel he should have suffered death since it says, if one breaches a wall he will be bitten by a snake.

309 This paragraph and the next are from Berakhot 1:7 (Notes 182-191) and Sanhedrin 11:6 (Notes 54-57); Midrash Cant. 1(18). The Geniza fragment ends here on line 2.
309 A comparison with the other texts shows that the correct text is the [Genizah text] not the (Leiden ms.) one in which the two traditions of R. Johanan are indistinguishable.
310 Cant. 7:10; Babli 35a.
311 Mishnah Berakhot 1:7.
Rebbi Ismael stated: In the Torah there are forbidden matters and permitted matters. There are easy parts and severe parts. But in the words of the Sopherim all are severe, since we have stated: “He who says that there are no phylacteries, to transgress the words of the Torah, is not prosecutable. Five compartments to add to the words of the Sopherim is punishable.” Rebbi Hanina in the name of Rebbi Idi in the name of Rebbi Tanhum bar Hiyya: The words of the Sages carry more weight than those of the prophets since it is written, do not preach, they preach. And it is written, I shall preach to you for wine and liquor. The relation of prophet and scholar can be compared to the case of a king who sent two seals to a province. About one of them he wrote, if he does not show you my seal and σημαντήριον, do not believe him. About the other he wrote, even if he does not show you my seal and σημαντήριον, believe him. So about a prophet is written, he gives you a sign or miracle. But here it is written, according to the teachings that they will teach you.

With the other two sources read: diplomatarii, persons authorized to use the imperial mail.

Greek “seal”.

Deut. 13:2.

Deut. 17:11.

Psalm 90:12.

Psalm 89:9.
Since he must slurp the contents of the stomach in the Temple it would be a desecration to use a clean Temple vessel for this purpose. A private vessel may not be introduced into the Temple precinct. The priest may use a dirty vessel which nobody else would use for food to eat the disgusting contents of the stomach of a bovine animal. The use of a clean vessel for this purpose is prohibited. A private vessel may not be introduced into the Temple precinct. The priest may use a dirty vessel which nobody else would use for food to eat the disgusting contents of the stomach of a bovine animal.

Rebbi Jacob bar Aha, Rebbi Simeon bar Abba in the name of Rebbi Joshua ben Levi: Because most calves there are slaughtered in the name of pagan worship. Rebbi Johanan heard this and said, my teacher taught us well, since if one slaughters an animal for pagan worship even its excrement is forbidden. Rebbi Johanan asked, if one found a ring in it? Rebbi Yose said, a ring is recognizable; excrement is part of its body.

What means “burns it”? He slurs it. Rebbi Simeon ben Laqish said, in a dirty cup. This implies that one who drinks from a dirty cup neither benefits nor commits larceny.

Why did he not tell him? Because they prohibited it recently and Rebbi Ismael was young.

321 In Midrash Cant. 1(17).
322 Since he must slurp the contents of the stomach in the Temple it would be a desecration to use a clean Temple vessel for this purpose. A private vessel may not be introduced into the Temple precinct. The priest may use a dirty vessel which nobody else would use for food to eat the disgusting contents of the stomach of a bovine animal.
323 They had to establish the authority of the newly formed Synhedrion at Jabneh; Babli 35a. The story must be dated to the last 20 years of the first Century, after the death of Rabban Johanan ben Zakkai (at an unknown date). R. Ismael never appears as a member of the Synhedrion.
Rebbi Onias said, Rebbi Hama bar Uqba raised a difficulty: If he wanted to deflect him to another subject, he should have removed him to the five indeterminate places in the Torah, which are the following: “gift, cursed, tomorrow, almond shaped, rise”. Behold if you choose well the gift or the gift if you do not choose well. For in their rage they killed a man and by their will castrated a cursed ox or cursed be their rage for it is strong. Moses said to Joshua: go fight Amaleq tomorrow or tomorrow I shall stand on top of the hill. On the candelabra four cups almond shaped or almond shaped their knobs and their flowers. The Eternal said to Moses, you will lie with your fathers and rise or rise will this people and whore. Rebbi Tanhum added the following: Jacob’s sons came from the field when they heard or when they heard the men were offended. Rebbi La said, there are things about which one kisses the mouth, as it is said, may he kiss me with the kisses of his mouth. Rebbi Isaac said, and me did the Eternal command. “Me, and me.” Things were said to me that were said to you. And things were said to me alone.

324 If R. Joshua’s intention only was to deflect R. Ismael’s inquiry there were many other questions to be asked.

325 In the absence of masoretic accents it may be difficult to parse a sentence. In Babli sources, this is called “verses that have no decision,” i. e., where to place the caesura. In our masoretic texts only Ex. 25:34 remains undecided in this sense. Parallel sources are Babli Yoma 52a/b, Gen. rabba 80(5) (Theodor-Albeck #957/958, Sokoloff Geniza Fragments p. 170), Midrash Cant. 1(18), Mekhita dR. Ismael, Amaleq 1, Mekhita dR. Simeon ben Iohai Epstein-Melamed p. 121, Tanhuma Bešallah 26. The list itself is attributed in most sources to Issy ben Jehudah.

326 Gen. 4:7. They must have read but also in the masoretic text there is a stop between and and.

327 Gen. 49:6-7. It is a question whether to read one or two sentences.

328 Ex. 17:9.

329 Ex. 25:34.

330 Deut. 31:16.

331 Gen. 34:7. Most translations follow the masoretic punctuation in choosing the first alternative but the German translation
by Torczyner et al. (Berlin 1934) which opts for the second.

332 This answers R. Hama bar Uqba’s question. The verse Cant. 1:2 was chosen because its first part, quoted now, tells R. Ismael to be silent since a person who is kissed on his mouth cannot speak at that time. The first part clearly refers to a male; nevertheless R. Ismael had a point reading the second part as addressing a female since the sentence switches from third to second person, possibly indicating a change of speaker.

333 Deut. 4:14. Here starts a rather defective Genizah fragment (Ginzberg pp. 276-277.)

334 Not everything has to be told to everybody.

335 Prov. 27:26.

336 Identifying $\psi$ and $\upsilon$ for the homily.

337 Ex. 21:1.

338 The laws in Ex. 21-22 are not to be told to Gentiles nor applied to their suits.
Mishnah 9: The following matters of Gentiles are forbidden but their prohibition is not of usufruct: Milk which the Gentile milked when no Jew was seeing him, bread, their oil\textsuperscript{339}, and anything preserved by cooking\textsuperscript{340}. Rebbi and his court permitted oil. Preserves in which usually wine is used\textsuperscript{341}, and vinegar\textsuperscript{342}, and pieces of triton\textsuperscript{343}, and fish sauce\textsuperscript{344} not containing a whole fish, and hallec\textsuperscript{345}, and a lump of asa foetida\textsuperscript{205}, and salgonarit salt\textsuperscript{346}; these are forbidden but their prohibition is not of usufruct:

\textsuperscript{339} Olive oil.
\textsuperscript{340} Even if the Gentile cooked with the Jew’s vessels under his control, as long as no Jew participated in the cooking process.
\textsuperscript{341} Preserves made with spices without cooking, such as Sauerkraut, where wine might have been added. The wine is forbidden but there is no danger that it might have been used for pagan rituals.
\textsuperscript{342} Vinegar is not wine, but vinegar might have been used for pagan rituals. The wine is forbidden but their prohibition is not of usufruct: Milk which the Gentile milked when no Jew was seeing him, bread, their oil.
\textsuperscript{343} Even if the Gentile cooked with the Jew’s vessels under his control, as long as no Jew participated in the cooking process.
\textsuperscript{344} Fluid obtained by squeezing fish.
\textsuperscript{345} “Fish sauce (garum) prepared from small fish” (Lewis and Short’s Latin Dictionary).
\textsuperscript{346} Musaphia reads and explains as sal conditum, spiced salt (mentioned by Pliny xxxi,87 and in Diocletian’s price edict. A recipe is given by Apicius.) Kohut proposes salcenarium Medieval Latin “used for pickling”. Also consider sal candidum “white salt” (E. G.).
**Halakhah 9:** “The following matters of Gentiles are forbidden,” etc.  

Why is Gentile’s milk forbidden? Rebbi Abba (son of) [in the name of] Rav Jehudah, Rebbi Simon in the name of Rebbi Joshua ben Levi: Why is Gentile’s milk forbidden? Because of uncovering. Let him make cheese! Rebbi Samuel ben Rav Isaac said, because of the poison given between the holes. It was stated so: There are three kinds of poison; one swims, one sinks down, and one is similar to a net. Workers were in the field. The water pitcher was uncovered. The first ones drank and were not disabled. The second ones died. I say that it was sinking poison. In the days of Rebbi Jeremiah the barrels of the great assembly were uncovered. The first ones drank and were not disabled. The second ones died. I say that it was sinking poison. It was stated thus: “If a watermelon was pecked and ten people ate from it or wine was uncovered and ten people drank from it, it is forbidden to eat or drink after them; I say that there is sinking poison.”

Rebbi Jeremiah said, why is Gentile’s milk forbidden? Because of admixture from forbidden animals. It was stated so: “There is nothing to worry if the Jew sits with the herd while the Gentile milks and brings to him.”

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347 Parallels to these two paragraphs are in Terumot 8:5 (Notes 135-142) and Šabbat 1:(3d line 2). The text in Terumot is a copy of the text in Šabbat; the text here is somewhat different.

348 The text of the Leiden ms. in parentheses has to be corrected by the text of B in brackets and the parallels.

349 One seems to assume that the poison will be separated out in the process of solidification making hard cheese. But if the cheese has holes the poison will accumulate there and there may be small holes not directly visible.

350 Babli 30b.

351 The half-yearly reunion of all members of the Academy.

352 Tosephta Terumot 7:17.

353 Babli 35b. This is the only explanation given in the Babli where also it is noted that making cheese from the milk does not solve the problem.

354 Tosephta 4:11; Babli 30b.
Their bread. Rebbi Jacob bar Aha in the name of Rebbi Jonathan. Bread is of the practices of obfuscation. [Rebbi Yose said, so I asked before Rebbi Jacob bar Aha: What means “of the practices of obfuscation”?]

Do I say, at a place where Jewish bread is available it is logical that Gentile bread should be forbidden and they obfuscated about it and permitted it? Or at a place where Jewish bread is not available it is logical that Gentile bread should be permitted and they obfuscated about it and forbade it? Rebbi Mana said, is there any obfuscation for prohibition? But is bread not like cooking of Gentiles? Are we saying: At a place where no Jewish cooking is available it is logical that Gentile cooking should be permitted? But it must be the following: At a place where Jewish bread is not available it is logical that Gentile bread should be forbidden and they obfuscated about it and permitted it because of the necessities of life. The rabbis of Caesarea in the name of Rebbi Jacob bar Aha: Following the words of him who was permitting, but only from the store; but one does not do this.

355 There are three parallels to this text, in Sevi’it 8:5 (Notes 57-62), Ma’aser Šeni 3:1 (Notes 2-3, b), and Sabbath 1 (3c l. 55, b). The Genizah text here, and the texts in Ma’aser Šeni and Sabbath are clearly copies of one and the same original; the text in Sevi’it is slightly different in wording but identical in meaning.

356 Added from the three identical texts; most of the paragraph is taken up by the questions of R. Yose and R. Mana; only at the end the correct answer is spelled out.

The practice of obfuscation is that the rabbis have to justify the popular disregard of their prohibition.

357 As shown in the Mishnah, rabbinic prohibitions do not need justification, only permissions which are inconsistent with general prohibition, such as to permit bread while prohibiting all other kinds of Gentile cooking.

358 The texts in Sevi’it, Ma’aser Šeni, and Sabbath add: “and they obfuscated about it and forbade it.” But the illegible space in is not sufficient for this addition; one has to assume that it never was in the Avodah.
Food you shall buy from them with money and eat, and bread it is in the category of Gentile cooking; forbidden in the Babli 35b. They objected:  Are there not their dry beans, their oatmeal, their rice, their beans, their lentils, and their peas forbidden in the Passover 44b. But their dry beans, their oatmeal, their rice, their beans, their lentils, and their peas are not forbidden. Why? Because Rebbi Yose ben Rebbi Abun in the name of Rav Eliezer ben Rebbi Huna said: "A woman, who would not eat them by herself, should not eat in the company of others."

They said before the Elder Rebbi Hiyya: Rebbi Simeon ben Iohai stated thus: Food you shall buy from them with money and eat, etc. As water is not changed from its natural state, so anything which was not changed from its natural state. They objected: Are there not their dry beans, their oatmeal, their rice, their beans, their lentils, and their peas forbidden in the Passover 44b. But their dry beans, their oatmeal, their rice, their beans, their lentils, and their peas are not forbidden. Why? Because Rebbi Yose ben Rebbi Abun in the name of Rav Eliezer ben Rebbi Huna said: "A woman, who would not eat them by herself, should not eat in the company of others."

Rebbi Simeon ben Iohai stated thus: Food you shall buy from them with money and eat, etc. As water is not changed from its natural state, so anything which was not changed from its natural state. They objected: Are there not their dry beans, their oatmeal, their rice, their beans, their lentils, and their peas forbidden in the Passover 44b. But their dry beans, their oatmeal, their rice, their beans, their lentils, and their peas are not forbidden. Why? Because Rebbi Yose ben Rebbi Abun in the name of Rav Eliezer ben Rebbi Huna said: "A woman, who would not eat them by herself, should not eat in the company of others."
361 Sabbath 1 (3c line 65). The Geniza fragment (כ) ends at the mention of Rav. Another fragment, in much better shape, edited by J. N. Epstein [Tarbiz 3(1932) 15-26 (G)] starts at the second mention of Deut. 2:28.


363 The list also appears in Tosephta 4:11. In the Babli 38b, a statement of R. Johanan. The Babli (38a) negates a biblical base for the prohibition of Gentile cooking.

364 In the Babli, 38b, a statement of R. Johanan. The Babli (38a) negates a biblical base for the prohibition of Gentile cooking.

365 The word is unexplained. In the Babli, loc. cit., and similarly in the Tosephta, it appears as כפתא “fig preserve”. This agrees well with the quote in the Babli since, as stated later also here, all preserves made from fruit which also is eaten raw are not under the prohibition of Gentile cooking. The only problem is that the next sentence implies that the word describes a dried fruit or vegetable which can be returned more or less to its original state but soaking.

367 Babli 38a, 59a; Sabbath 51a, Bava qamma 11a, Yebamot 12b. Also Yerushalmi Nedarim 6:1 (39c l. 44).

368 The Sabbath text adds: And it may be used for eruv tavshilin (a symbolic act which turns a common courtyard or a dead-end alley into a private domain, or which lets one prepare cooked food for the Sabbath on a holiday which falls on a Friday); this formulation may be taken from the end of the Halakhah.
Rebbi Ahad said, Rebbi Tanhum bar Hiyya in the name of Rebbi Hanina, some say in the name of Rebbi Joshua ben Levi: They were climbing up King’s Mountain and were killed about it. Isaac bar Samuel bar Martha went down to Nisibis. He met Simlai, the Southerner who sat and expounded: Rebbi and his court permitted the oil. Samuel said, true! Rav did not accept on himself to eat. Samuel told him, eat! Otherwise I shall declare you a rebellious Elder. He answered him, when I still was there I
knew who complained about it, Simlai the Southerner. He told him, he said it in the name of himself, not in the name of Rebbi Jehudah the Prince. He bothered him and he ate.

Rebbi Johanan asked: Did we not state, “for no court may invalidate the words of another court unless it be greater in wisdom and numbers”? And Rebbi and his court permit what Daniel and his companions forbade? Rebbi Johanan follows his own opinion: Rebbi Johanan said, I have a tradition in the name of Rebbi Eleazar ben Rebbi Sadoq that any restrictive edict passed by a court which is not accepted by the majority of the public is not an edict. They checked and found in the matter of the edict about oil and did not find that a majority of the public followed it.

The following also is in Sabbath I, 3d line 16 ff., ψ. While the sentence order there differs from here, the fact that G while following the sentence order of L very often follows the formulation of ψ indicates that the two texts are essentially the same.

Dan. 1:8. The verse does not seem to mention olive oil. As the Babli explains (36a), the argument is from the continuation, that he would not defile himself by the king’s solid food and the wine of his drinks, where the plural drinks refers both to wine (whose prohibition is generally accepted) and oil (where Daniel’s action rather is an act of personal piety.) In any case, the prohibition of Gentile olive oil never was considered to have any biblical basis.

Babli 36a.

Gittin 7:3, Notes 49-64. The essence of the controversy is whether a divorce document subject to a certain condition is only valid after the condition has been satisfied or is valid immediately but not actionable unless the condition be satisfied. The simplest example is that of a sick childless man who wants to shield his wife from levirate marriage (or prevent her from marrying his brother) by writing a bill of divorce valid if he should die from his disease. If he stipulates that divorce be “from today if I shall die”, the divorce is unquestionably valid. If he omits “from today” then for Rebbi it is valid, for the rabbis it is invalid since a dead person cannot divorce.

Niddah 3:4, Notes 93-98. The “sole” is the result of a miscarriage where no features are recognizable in the aborted fetus. For the rabbis, the woman is subject to all disabilities of a woman who gave birth to a male and a female (Lev. 12:1-8), for Rebbi and his court only if human features were recognizable.

In the other two sources: Should he not be called “a permissive court” (a pejorative term) since . . . “

These two sentences really do not belong here; they are copied from the text in Gittin (Note 54) which thereby is shown to
be the source of the preceding sentences, and refer to Mishnah Gittin 7:10 about a man who gave his wife a bill of divorce valid if he should not return within 12 months, and notice was received of his death. Does she have to wait the full 12 months or not?

380 In the Babli and Tosaphot, this immediately follows the statement that Daniel forbade Gentile oil and invalidates it. It is not clear what danger there was in getting Gentile oil but since both Talmudim declare the prohibition of Gentile oil to be of the 18 prohibitions promulgated in the run-up to the first revolt against the Romans (Shabbat 1, 3c 1.37, Babli 17b) it must refer to the situation there. The exact meaning of “King’s mountain” as a geographical entity has not been determined.

381 In the Babli and Tosaphot, as well as in the quote from the Yerushalmi in Tosaphot 36a, s.v. ר"ש, R. Simlai. Babli 37a. This dates under Rab. (41d line 65) יבשה אלכסה שלקה יבר קפרא שרי. הוקת אסר יבר. דע כדור בשיאלית מדוע.

382 In the Babli and Tosaphot, the Babli has “from Lydda”, which is taken as a pejorative term.

383 Cf. Sanhedrin 8:6, Note 64.

384 When Rav was studying in Galilee under Rebbi (Judah I) and R. Hyya the Elder.

385 Rav to Samuel. In the Babli. 37a, R. Simlai is described as being critical of the decision to allow Gentile oil.

386 Rav ate in order to sustain the authority of the Patriarchate.

387 Mishnah Idiot 1:5.

388 In the Babli 36a: It is forbidden to promulgate a decree that the majority of the public cannot accept.

389 Babli 36a. This proves conclusively that the original prohibition of oil was relatively recent and purely rabbinic.
Their roasted egg, Bar Qappara permitted, Hizqiah forbade\(^{390}\). So far if it was roasted intentionally. If it was roasted unintentionally? Let us hear from the following: There was a fire in an under-growth of reeds and a swamp of date palms where there were locusts which were roasted. The case came before Rebbi Mana\(^{391}\), who forbade them. Rebbi Abbahu said, because of admixture of impure locusts\(^{392}\). Rebbi Yose ben Rebbi Abun said, and this is of the stringencies of Rav. Rav returned there and saw them taking things lightly and was restrictive with them\(^{393}\). A man was carrying meat while walking on the market. There came a vulture, seized it from his hand, and it dropped off\(^{394}\) under him. He went and wanted to sell it. Rav told him, it is forbidden to you, for I am saying that it was carrying carcass meat, dropped it and took the other instead\(^{395}\). A man went to wash a piece of meat\(^{396}\) in the river. He forgot it and left. Then he went and wanted to sell it. Rav told him, it is forbidden to you, for I am saying the other one was carried away by the river and it brought another piece of carcass meat in its place\(^{397}\).

\(^{390}\) Babli 38b. The egg is roasted in its shell so that there are no problems of non-kosher admixtures. It is not impossible to eat an egg raw.

\(^{391}\) R. Mana I.

\(^{392}\) Babli 38a.

\(^{393}\) He used his office as overseer of Jewish markets to enforce strict rabbinic rules.

\(^{394}\) As recognized by J. N. Epstein, Aramaic רפא is Af`el of Aramaic רפַּע Hebrew רפָע.

\(^{395}\) This is a case of “meat which had been lost sight of” which must be treated as non-kosher; it cannot be sold as kosher meat. Quoted in Tosaphot Bava mesi’a 24b s. v. נין.

\(^{396}\) The translation is a guess based on the context; the word itself is unexplained. It appears only here and in the exact parallel Šeqalim 7:3 (50c l. 47). Sokoloff in his Dictionary of Jewish Palestinian Aramaic\(^{2}\) accepts also Jastrow’s explanation “an object on which the meat was hung” but this seems to be excluded by the context.

\(^{397}\) A similar story in the Babli Hulin 95a-b.
What is the status of their lupines? Rebbi forbids, Ganiba permits. Rebbi said, I am an Elder and he is an Elder. It came to my mind to forbid; it was his opinion to permit. Rebbi Mana bar Tanhum went to Tyre and permitted their lupines. Rebbi Hyya bar Abba went to Tyre and found that Rebbi Mana had permitted their lupines. He returned to Rebbi Johanan who asked him, what case came to your hands? He told him, I found that Rebbi Mana had permitted their lupines. He asked him, did you not hit him? He answered, he is an important personality and knows how to sweeten the waters of the Great Sea. He told him, no, my son. He knows how to compute the waters; when the waters come together to acclaim their Creator they sweeten themselves. Rebbi Isaac bar Eleazar said, he starts to speak his disgrace and tells his praise! Rebbi Yose ben Rebbi Abun said, it is a difficult computation; Rebbi Zakkai of Alexandria knows it. He said, if you want, you may learn it from him.

398 They cannot be eaten raw; according to Yerushalmi rules cooked lupines should be forbidden as Gentile’s cooking. But Ganiba was a Babylonian and the Babli has a second category of food exempted from the rules: coarse food not eaten in polite society (Babli 38a, rules of the autochthonous academy of Pumbedita.) The paragraph makes clear that this tradition never was accepted in the domain of influence of the Academy of Tiberias.

399 Here ends the second Genizah fragment.

400 Cf. Midrash Tehillim on Ps. 93:4.
What is the rule for their parboiled [food]? Let us hear from the following: Rebbi Immi went with Rebbi Jehudah to the hot springs of Gadara and permitted their parboiled [food]. Rebbi Abba bar Mamal asked, what is the difference between parboiled and lupines? Rebbi Yose said, parboiled is missing action by fire; lupines are not missing action by fire.

Hawarnas is not forbidden because of Gentile cooking and one may use it for eruv tavšilin. Martisa is not forbidden because of Gentile cooking and one may use it for eruv tavšilin. Rebbi Yose ben Rebbi Abun in the name of Rav: Any food which can be eaten alone raw is not in the category of Gentile cooking and one may use it for eruv tavšilin.

401 Scalding is not boiling; while the food is prepared it is not cooked.
402 These two words are unexplained; they can be given sense only by radical emendation. It takes some imagination to define martisa as “hash” (Jastrow) on basis of Arabic دُرَّس “to hit somebody with one’s hand”; it may be somewhat better to rewrite it as Babylonian مَرَّة “sauce made out of ground sardines” (Jastrow) since Palestinian ְלַעֲנוֹת often corresponds to Babylonian לועות. Also compare Latin arvina “grease, fat,” and moretum, Greek μορτός, a country dish (E. G.).

Mishnah 10: The following are permitted to eat: Milk which a Gentile milked while a Jew saw him, and honey, and broken grapes (even though they drip they do not prepare for impurity. Preserves in which usually wine or vinegar is not used, and uncut triton, and fish sauce containing a
whole fish\textsuperscript{344}, and a leaf of \textit{asa foetida}\textsuperscript{205}, and rolled olives\textsuperscript{405}; Rebbi Yose says, the pitted ones are forbidden\textsuperscript{406}. Locusts from the basket are forbidden\textsuperscript{407}, from storage permitted; similarly for heave\textsuperscript{408}.

403 Table grapes transported in baskets, not vine grapes transported in barrels. In the first case, juice dripping from broken grape berries is lost. In the second case the juice is collected in the barrel and poured into the wine press; this juice follows all the rules of wine and becomes forbidden by the Gentile’s touch.

404 Any vegetable food cannot become impure as long as it is connected to the ground. After harvest it can become impure once it comes into contact with water (\textit{Lev.} 11:38). Juice is treated as water in this respect. But the verse reads, \textit{if water is poured on vegetables}, this is read to imply that contact with water makes vegetables susceptible to impurity only if it was poured intentionally or at least if the wetting was agreeable to the owner (\textit{Sifra Šemini Pereq} 11). Therefore juice which flows out of table grapes does not prepare for impurity since it is lost, but juice flowing from wine grapes does prepare for impurity since it is not lost and eases the work of wine pressing.

405 It seems that the correct reading is that of the \textit{Arukh}: התיי קוליסים המגנולים and the expression is a double Greek-Hebrew, the olives are “rolled” (or “apt to be rolled”) Greek κυλίστως and Hebrew “rolled”. Cf. E. and H. Guggenheimer, Notes on the Talmudic Vocabulary, \textit{Lešonenu} 37 (1973) pp. 23-25.

406 He thinks that standard technology is to soften the olives by vinegar before removing the pits (Tosephta 4:8).

407 One assumes that the store will sprinkle the dead locusts on display with vinegar to keep them looking fresh (Tosephta 4:12).

408 A Cohen, who certainly is Jewish, has a food store and therefore can legally refreshen his locusts with vinegar or wine. If he is suspected of illegally using his heave wine or vinegar, which by biblical decree must be eaten by the Cohen in purity and should not be used commercially, to sprinkle on locusts for sale, he has to be treated the same as a Gentile seller of the same.
Halakhah 10: “The following are permitted for usufruct, etc. Rebbi Eleazar said, about a dish in which usually one does not add wine or vinegar. Therefore if it is certain that he added, it is forbidden even for usufruct.

Rebbi Jacob bar Aha, Rebbi Hiyya in the name of Rebbi Johanan: If a Jew and a Gentile put a pot on the fire, the Jew puts it down and the Gentile stirs. Who puts it back? One would say that the Jew puts it back. Rebbi Benjamin bar Levai said, only if it is cooked like Ben-Drosai’s food. Rebbi Yose asked, if it is cooked like Ben-Drosai’s food, why does the Jew have to put it back? Even the Gentile may put it back.

409 This looks like a misquote from the Mishnah but probably is not since the following statement of R. Eleazar makes sense only if it relates to usufruct, not to food eaten by Jews.

410 Since one refers to dishes produced by Gentiles they are forbidden as Gentile cooking. The only question is whether a Jew may use them as objects of trade. He may do that only if in the standard cookbooks no addition of wine or vinegar is required. In any case, if it is known that wine or vinegar was added it is forbidden for usufruct. If nothing is known but the standard recipe does not call for wine it is a legitimate object of trade.

411 The Babli declares that there is no prohibition of Gentile cooking if either the Jew puts it on the fire and the Gentile cooks or the Gentile puts it on the fire and the Jew cooks.

412 Since the Yerushalmi requires that the Jew put the dish on the fire it is obvious that he has to put it back if for some reason the pot was taken off the fire.

413 “The trampler”, a famous robber who always was on the run and therefore could eat his meat only rare. “Ben Derosai’s food” is rare, cooked one-third of normal cooking time.

414 Any food cooked rare is no longer subject to the rules of Gentile cooking.
What is *alec*? Rav said, *soltanit*\(^{415}\). Rebbi Johanan said, *alec* and cut-up triton follow the same rules. Rebbi Ze’ira, Cahana bar Tahlifa, Hanan bar Abba in the name of Rav: Its mucus is forbidden because of admixture from prohibited fish. Rebbi Abba in the name of Rav Jehudah: This you say at a place were water is not running. But in running water no impure fish associates with pure fish. The Sea of Genezareth is similar to running water. Rebbi Yose ben Rebbi Abun said, only at times when the fish bites. Samuel said, *haftita*\(^{416}\) one judges according to its shell. If it produces mucus it is permitted, otherwise forbidden.

What is uncut triton? Any where heads and spines exist\(^{417}\). Rebbi Eleazar in the name of Rebbi Hanina: It happened that on a ship of the House of Rebbi there were more than 300 amphoras. Rebbi checked them all out and found only one where heads and spines were found. He permitted all of them. Rebbi Jacob bar Aha said, Rebbi Assi\(^{190}\) asked, would it not be reasonable that one amphora be permitted but the other amphoras be forbidden? But it was by a pretext.\(^{418}\)\(^{419}\) (A sale)\(^{420}\) was mixed up. Rebbi Haggai asked Rebbi Abba bar Zavda who said to him, the property of the public cannot be forbidden. Rebbi Jacob bar Zavdi said, Rebbi Isaac asked: Is not Cajus Lycus written on these documents, and you say, by a pretext?\(^{421}\)

\(^{415}\) There is no linguistic evidence for translating either sardine or herring. All one has to go on is a remark in the Babli 29a that *soltanit* is forbidden because it is a small fish caught together with non-kosher fish. Cf. Latin *solea* “sole” (also the fish).

\(^{416}\) This kind of fish likewise has not been identified. In *Cant. rabba* ad 1:4 it is noted that it is a jumping fish. Arabic *朓* is a large non poisonous snake.

\(^{417}\) Babli 40a, opinion of Rav Huna.

\(^{418}\) Since all of the amphoras came from the same source, he had reason to assume that all of them were made by the same rule.

\(^{419}\) The following sentences are from *Terumot* 10:7, Notes 91-94. The common topic are subterfuges to stretch permissions over the reasonable limit.

\(^{420}\) In *Terumot* one reads “cheeses”, 3 for
a not infrequent misreading. While the principle of R. Abba bar Zavda refers to public property, here he applied it to loads on a common carrier. This is a subterfuge.  
421 Divorce documents can only be signed by Jews. In the diaspora, one must accept also Jewish witnesses with Latin and Greek names; therefore the appearance of foreign names on documents is no reason for attacking the genuineness of a document under any circumstance. This is a subterfuge.  

Ulla the leatherworker\textsuperscript{422} stated before Rebbi Dosa, an impure fish has live births, a pure fish lays eggs\textsuperscript{423}. He started again \textand stated, fish intestines and fish innards are eaten only upon certification by an expert\textsuperscript{434}. He told him, change your statement! This one state or that one. Rebbi Ze`ira said to him, do not change your statement. They are finished only upon being laid\textsuperscript{425}. Rebbi Abba in the name of Rav Jehudah, if one tells you, I salted them, he may be believed\textsuperscript{426} Nathan bar Abba said before Samuel, I know how to distinguish between fetuses of impure fish and fetuses of pure fish. The fetuses of impure fish are spherical, the fetuses of pure fish are elongated\textsuperscript{427}. He showed him a salpe\textsuperscript{428}; he asked him, what is its status? He answered, impure. He told him, not only am I aggravated that you said impure of what is pure but at the end you will say pure of what is impure.  

It was stated: One buys fish intestines and fish innards only upon certification by an expert\textsuperscript{429}. One buys dark blue wool only upon certification by an expert\textsuperscript{204,430}. One buys Bithynian\textsuperscript{431} cheese only upon certification by an expert\textsuperscript{429}. One buys wine in Syria only upon certification by an expert\textsuperscript{429}. One
buys meat without a mark only upon certification by an expert\textsuperscript{429}. But all one may eat at a person’s who is not an expert without worry\textsuperscript{429}.

\textsuperscript{422} Accadic \textit{aškapu}.
\textsuperscript{423} Babli 40a, \textit{Bekhorot} 7b.
\textsuperscript{424} Babli 40a.
\textsuperscript{425} In the Babli 40a the question is asked by Ulla (ben Ismael) to R. Dositheos of Bire and answered by R. Ze’ira correctly that all lay eggs but some impure fish hatch their eggs in their body (clearly excluding mammals). It is not impossible to read the same meaning into the statement here.
\textsuperscript{426} Babli 40b. If he asserts that he checked the fish and they were of the pure kind, he does not have to be an expert.
\textsuperscript{427} In the Babli, 40a, it is asserted that impure fish eggs are symmetrical ovaloid, pure fish eggs asymmetrical.

Rebbi Aha, Rebbi Tanhum in the name of Rebbi Joshua ben Levi: If one sent \textit{asa foetida} he is trustworthy\textsuperscript{432}. Rebbi Jacob bar Aha, Rebbi Jacob bar Idi in the name of Rebbi Joshua ben Levi: If one sent dark blue wool he is trustworthy. The lad of Levi of Sanbar was selling produce\textsuperscript{433}. Rebbi Jacob bar Aha in the name of Rebbi Yasa: The slave of a trustworthy person is trustworthy. Germanus the slave of Rebbi Jehudah the Prince had dark blue wool. Rebbi Yasa in the name of Rebbi Johanan: The slave of an expert is like an expert\textsuperscript{434}.

\textsuperscript{428} Greek \textit{sálpa}, Latin \textit{salpa, -ae}, “stock-fish”.
\textsuperscript{429} Tosephta 4:13, Babli 39b.
\textsuperscript{430} Babli \textit{Menahot} 42b.
\textsuperscript{431} The translation assumes that \textit{iwiipize} is a scribal error for \textit{iwiipiza} “Bithynian”, which in the Mishnah in the Babli (Note 270) characterizes cheese which is forbidden for usufruct if produced by Gentiles. In the Tosephta \textit{ed. princeps} Erfurt ms., Vienna ms. missing. The Vienna text is the only one agreeing with the Mishnah as printed in the Yerushalmi editions.

\textsuperscript{432} If a person sends a gift to another of a substance whose kosher status might be questionable, the recipient may assume that the gift was kosher, otherwise it would not have been sent without proper warning. Babli 39b.
\textsuperscript{433} The lad was a slave. The question was whether the buyer of produce may assume
that heave and tithes were taken from produce sold by the servant of a person who himself was known to be trustworthy in matters of heave and tithes. Since the slave’s owner would not tolerate untithed produce in his house, one must assume that any produce sold by his slave was tithed.

Babli 39a.

434 This is parallel to the previous case. Since R. Jehudah the Prince would not tolerate fake blue wool on his property, one may buy blue wool threads from his slave even if the latter was uneducated.

“And salqonarit salt.” Some Tannaîm state, black one is forbidden but white permitted. But some Tannaîm state, white one is forbidden but black permitted⁴³⁵. He who said black one is forbidden, because one puts a black crawling thing in it. He who said white one is forbidden, because one puts a white crawling thing in it. Rebbi Hanania ben Gamliel said in the name of Rebbi Jehudah ben Gamliel, both are forbidden. Rebbi Hanania⁴³⁶ said, we had a neighbor who was mixing it with pig fat.

⁴³⁵ One of these is R. Meïr, the other R. Jehudah, but Babli 39b and Tosephta 4:12 give contradictory attributions. One has to assume that the editors of the Yerushalmi refrained from attaching names to the traditions since they knew about differing attributions.

⁴³⁶ He is the previously mentioned R. Hanania ben Gamliel, Babli 39b.

⁴³⁷ Coverings are the same as protuberances⁴³⁸. Veiled is the same as hulled⁴³⁹. Roofs are the same as covers⁴⁴⁰. Cups are the same as grooves⁴⁴¹. A place under cups is a place for putting down pieces⁴⁴². Κυλιστότ olives are rolled olives⁴⁴³.
“The pitted are forbidden.” Rebbi Ḥiyya in the name of Rebbi Johanan said, it is a variety and they put vinegar on them to be able to remove their pits.

437 In this paragraph one gives example of technical terms used in Mishnaiot which are essentially the same. The list is made to explain the term which however is somewhat different in combining two expressions which are translations of one another (Note 405).

438 In Mishnah Ahilut 8:2 it is explained that refers to trees giving shade and to bushes growing out of a stone wall. Both transmit “tent” impurity.

439 Mishnah Šabbat 6:6: On a Sabbath, a Jewish woman in Arabia may walk in the public domain veiled and in Persia hulled.

440 Mishnah Kelim 8:9. An oven (furnus) may become impure if according to R. Jehudah it has a roof (στέγη), according to Rabban Gamliel if it has a platform ( yat)).

441 Mishnah Parah 2:5: Two black hairs growing in the same groove disqualify a red cow; R. Jehudah says in the same cup.

442 Mishnah Kelim 22:1: A table or tripod (portable pieces of furniture which may become impure if whole) which were damaged but were covered with a marble top (which cannot become impure) still may become impure if the cover excludes a place for putting there cups (majority opinion) or pieces (R. Jehudah).

443 A kind of olives which can easily be freed of its pits. The name refers to the root ḫøs I “to strip off”.
Mishnah 1: All statues are prohibited because they are worshipped once a year, the words of Rebbi Meir, but the Sages say, prohibited are only those in whose hand is a rod, or a bird, or a globe. Rabban Simeon ben Gamliel says, any in whose hand is anything.

1 Prohibited for usufruct. For R. Meir there are no statues made for artistic value alone.
2 A symbol of command.
3 A symbol of having access everywhere.
4 A symbol of ruling the earth.

Halakhah 1: “All statues are prohibited,” etc. Rebbi Hiyya bar Abba said, because they are worshipped in the great fortification of Rome twice in a Sabbatical period. Then at a place where they are worshipped they should be forbidden, at a place where they are not worshipped they should be permitted. Rebbi Yose said, since they became forbidden at one place, their kind becomes forbidden anywhere.
Where do we hold⁷? If it is certain that they are of kings⁸, according to everybody they are forbidden. If it is certain that they are of rulers⁹, according to everybody they are permitted. But where we hold is if it is indeterminate. Rebbe Meir says, indeterminate they are of kings but the rabbis say, indeterminate they are of rulers.

Ashian the woodworker in the name of Rebbe Johanan: why are pictures forbidden¹⁰? Because one burns incense before them at the time they are hung. Rebbe Johanan said, one may look at them when they are taken down. What is the reason? *You may look when the evildoers are being destroyed*¹¹. One may not look at inscriptions under figures or under pictures on the Sabbath¹². Not only this, but even on a weekday one does not look at pictures. What is the reason? *Do not turn to idols*,¹³ do not turn to worship them; Rebbi Jehudah says, do not turn actually to see them.

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5 This is given as R, Meir’s reason.
6 Babli 40b (following R. Meir).
7 Where is the disagreement between R. Meir and the rabbis?
8 Since Augustus introduced the worship of the Emperor in the provinces, any statue of an Emperor is an idol.
9 The statue of a procurator is not an idol.
10 Flat pictures of pagan deities or pagan subjects, since the Second Commandment forbids only three-dimensional forms.
11 Ps. 34:37.
12 Babli Sabbath 149a. Since the inscription explains what the picture is all about, reading it is for non-religious information which is forbidden on the Sabbath.
said, the dead person hears his eulogy as in a dream. Rebbi Ashian said, the
dead person hears his eulogy16a as in a dream. Why was he called “Nahum
the most holy man”? because he never in his life looked at the form on a coin17.
Why was he called “our holy teacher”? Because he never looked at his
circumcision17.

14 The entire paragraph in Eccl. rabba
9(9); cf. also Babli Mo’ed qatan 25b.
They covered all icons along the route
of the funeral procession by mats. (In the
Babli, the icons turned into mats.)
15 Babli Berakhot 18a.
16 Midrash Ps. 30(3) [ed. Buber Note 6];
Pesiqta rabbati 2 (ed. Friedmann Note 17),
12 (Note 4). The name tradition changes
from source to source.
16a קהלות “praise” is derived from Greek
καλώς! “beautiful, excellent”. For the use
as “eulogy” compare καλωλογέω, same as
εὐλογεώ (E. G.).
17 Sanhedrin 10:6 Note 335, Megillah
1:13 (72b l. 57) 3:3 (74a l. 39); Babli Sabbath
118b, Pesahim 104a.
Rebbi Hanina from Hauran expired, Lake Tiberias was split. They said, when he was going to intercalate\textsuperscript{20}, the lake was split before him. When Rav Hoshiaia expired, the shame\textsuperscript{21} of Tiberias fell down. When Rebbi Isaac ben Elyashiv expired, 70 thresholds of Galilean houses were uprooted. They said, these were kept in place by his merit.

\textsuperscript{22} When Rebbi Samuel ben Rav Isaac expired, the cedars of the Land of Israel were uprooted. They said that he was taking branches and danced while singing\textsuperscript{23} before brides. The rabbis were complaining about him. Rebbi Ze’ira said to them, let him alone, the old man does not\textsuperscript{24} know what he is doing. When he expired, fire came from Heaven and separated between his bier and the public; there were three hours of thunder and lightning in the world. They showed\textsuperscript{25} what this branch did for the old man. There came a disembodied voice and said, woe that Samuel bar Rav Isaac, the doer of good deeds, has expired.

When Rebbi Yasa bar Halfuta expired, the water pipes drew blood in Laodicea\textsuperscript{26}. They said, because he devoted his life to circumcisions.

When Rebbi Abbahu expired, the pillars of Caesarea were crying. The Samaritans said, they only are making a joyful noise\textsuperscript{27}. The Jews told them, do the outsiders know what sound the insiders make? When Rebbi Abbahu expired, they had thirteen rivers of balsamum flowing before him. He asked them\textsuperscript{28}, for whom are these? They told him, they are yours. He said to them, all of this is for Abbahu, and I said, in vain I labored\textsuperscript{29}, etc.

18 Most of these remarks about wonders which happened at the death of holy men are alluded to in the Babli, \textit{Mo’ed qatan} 25b.
19 R. Johanan’s beauty is extolled in the Babli, \textit{Bava mesi’a} 84a.
20 Calendar intercalations, the proclamations of an additional month in the year, were done at the hot springs of Gadara, near the South-East corner of the Lake of Genevareth.
21 Usually השם “shame” means a brothel (cf. \textit{Horaiot} 3:7 Note 259), possibly government run. It is possible that here one should read כֹּלְנָם “a pillar” (commentary \textit{Gilyon Efrain}).
22 This story appears also in \textit{Peah} 1:1 (Note 139) and twice in \textit{Gen. rabba}. The different Yerushalmi versions are compared in Appendix 2 of M. Sokoloff, \textit{The Geniza Fragments of Bereshit Rabba}, Jerusalem 1982. (Babli \textit{Ketubot} 17a.)
23 Arabic פסנ “to dance while singing”.
This ישב is not the verb ישב derived from
24 J. N. Epstein deletes this word since in the parallels R. Ze‘ira appears in a positive light.
25 Read יוה instead of אשי.
26 In the Babli, R. Yose (ben Halafta, the Tanna) at Sepphoris.
27 Since R. Abbahu, was the driving force behind the permanent separation of Jews and Samaritans (Halakhah 5:3, Babli Hulin 6a.)
28 The angels. The next paragraph implies that he saw his reward before his death, and explains the euphemism “expired” (really “slept”) for “died”. Gen. rabbah 63(3). A similar story is in the Babli, Ta'anit 25a, referring to R. Eleazar.

...The Holy One, praise to Him, shows to the just their rewards in this world; their soul is satisfied and they go to sleep. [A parable] of a king who gave a dinner and pictured all kinds of dishes on a chart. When the guests entered they saw it, they were satiated and went to sleep.

...Zavadai ben Levai, and Rebbi Yose bar Petrus, and Rebbi Joshua ben Levi said three verses when they expired. One of them said, for this every pious one should pray to You etc. And one said, all who rely on You will enjoy etc. And one said, how great is Your bounty which You did hide for those who fear You etc.

30 Gen. rabbah 63(3), an enlarged version. 31 Gen. rabbah 63(4), 92(2), Ex. rabbah 32 Ps. 32:6. 33 Ps. 5:12. 34 Ps. 31:20.
Rebbi Jacob bar Idi in the name of Rebbi Joshua ben Levi: It happened that the Elders assembled in the upper story of House Gadya at Jericho when there came a disembodied voice and told them, there are two among you worthy of the Holy Spirit and one of them is Hillel the Elder. They looked at Samuel Minor. Then the Elders assembled in the upper story at Jabneh when there came a disembodied voice and told them, there are two among you worthy of the Holy Spirit and one of them is Samuel Minor. They looked at Eliezer ben Hyrcanos. They were happy that their opinion coincided with that of the Holy Spirit.

One of the Patriarch’s court expired. The burial cave received him but people’s lives were endangered. Rebbi Yose came and held a funeral oration, “happy the man who leaves the world in peace.” When Rebbi Yasa died, the sacred fountain of Tiberias fell down and those of the Patriarch’s court were happy. Rebbi Ze’ira told them, it is not comparable. There people were in danger, here nobody was in danger. There no pagan worship was uprooted, here pagan worship was uprooted.

35 This paragraph is from Horaiot 3:7, Tosephta Sotah 13:3-4; parallels in the Babli Sotah 9:17, 9:13-14 (Notes 212-218), Berakhot 57a, Sotah 48b, Sanhedrin 11a.

36 Probably the cave was unsafe.
37 This name probably should read “Yasa” as in the following, since R. Yose was R. Ze’ira’s student’s student.
38 The usual interpretation as Latin castellum (New Greek καστέλλιον), expression used by Vitruvius for the water container on top of a water tower, fits Tosephta Miqwaot 4:6 but not this passage.
39 That something happened to the preacher who found fault with the court because something happened at one of its funerals.
Rebbi Jacob bar Idi in the name of Rebbi Joshua ben Levi: When Rabban Johanan ben Zakkai died, he said, clear the house because of impurity and prepare a chair for Hezekiah, the king of Judah. When his student Rebbi Eliezer died, he said, clear the house because of impurity and prepare a chair for Rabban Johanan ben Zakkai. But some say, what his teacher saw, he saw.

Some of the family of the Patriarch proposed a marriage connection to one of the house of Rebbi Pazi but he did not accept; he said that they should not be embarrassed by him. When he died he said, clear the house because of impurity and prepare a chair for Josaphat, the king of Judah. They said, the one who ran after honor should come for him who fled before honor.

40 Sotah 9:17 (ו) Notes 283-284. The first paragraph is slightly reformulated, the second more radically except for the last sentence. Probably one should read bar Pazi instead of Rebbi Pazi. According to Horaiot 3:7 (Note 329) the family bar Pazi already was related to the Patriarchate but had no learned members.
“But the Sages say, prohibited are only those in whose hand is a rod, or a
bird, or a globe.” A rod by which he rules the world$^{41}$. A bird, my hand
reaches to the riches of people as to a bird’s nest$^{42}$. A globe, for the world is
globe-shaped.

$^{43}$Rebbi Jonah said, when Alexander the Macedonian wanted to ascend he
rose, and rose, and rose, until he saw the world as a globe and the ocean like a
bowl. Therefore one represents him with a globe in his hand. Should one not
represent him with a bowl in his hand? He does not rule over the Sea. But the
Holy One, praise to Him, rules over Sea and dry land, He rescues on the Sea
and on land.

$^{44}$Rebbi Ze‘ira the son of Rebbi Abbahu preached before Rebbi Eleazar.
Happy is he whom the God of Jacob helps$^{45}$. What is written after this? The
Maker of Heaven and Earth. What has one to do with the other? But a king
of flesh and blood needs a protector$^{45*}$; in one district$^{46}$ he is not a ruler, maybe
in another one? If you say a universal ruler$^{47}$ rules over dry land, does he
[rule] over the Sea? But the Holy One, praise to Him, is not like this; He rules
over the Sea, He rules over dry land. Not only this, but if a sword is at a
person’s neck the Holy One, praise to Him, saves him. That is what Moses
said, He saved me from Pharao’s sword$^{48}$. It is written only sword$^{49}$. Even if
a sword is at his neck the Holy One, praise to Him, saves him from it.

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41 Babli 41a. The other two attributes are
interpreted differently; the Yerushalmi inter-
pretation also is in Num. rabba 13(13).
42 Is. 10:14.
43 Num. rabba 13(13).
44 A slightly different version of this
paragraph is in Berakhot 9:1 (Notes 56-58).
45 Ps. 146:5-6.
45* Latin patrumus “protector, defender”.
46 Greek ἐπισχία.
47 Greek χορμοκράτωρ, the Roman
Emperor. A king in the Roman principate
was a local ruler subject to orders from
Rome.
48 Ex. 18:4.
49 Since it does not say “from Pharao” but
“from Pharao’s sword” Moses was
condemned to death but escaped
miraculously (Berakhot 9:1 Notes 42-47,
Deut. rabba 2(20), Midrash Cant. 7(5),
Midrash Ps. 4[3].)
They added to this the sword, the crown, and the ring.50 The sword with which he kills, the crown with which he crowns himself, the ring with which he seals.

It is forbidden to seal with a seal on which there is an idol. Rebbi Jehudah says, if its seal was recessed it is forbidden to seal with it, if it protrudes it is permitted to seal with it51. Rebbi Hanina ben Gamliel says, in my father’s family they were sealing with faces52. Rebbi Eleazar ben Rebbi Simeon says, all kinds of faces were in Jerusalem except human ones53.

50 Tosephta 5:1, Babli 41a.
51 Babli 43b. A figure prohibited by the Second Commandment is a three-dimensional plastic image. A ring with a concave picture will result in a protruding seal which therefore is forbidden (but as the Babli points out, one is permitted to wear such a ring.) A ring with a protruding picture results in a recessed seal which is permitted (but one may not possess such a ring.)
52 Greek πρόσωπον, τὸ “face”.
53 In the Babli (42b): All faces are permitted except human ones. Tosephta 5:2.

Rabban Simeon ben Gamliel says, any in whose hand is anything.” But only matters of honor54. A basket, laced shoes, and rags are matters of dishonor. Papyrus and reed pen55 are matters of honor. The pen-case56 is problematic.

54 Babli 43b.
55 Greek καλαμὼν, τὸ.
54 Latin calamus, -i; Greek κάλαμος, ὁ.
Mishnah 2: If one finds shards of vessels they are permitted. If one finds the figure of a hand or of a foot these are forbidden because similar ones are worshipped.

56 In the Babli and the independent Mishnah mss.: “of idols”. While idols are and remain biblically forbidden for all usufruct, a pagan (not a Jew) who damages or breaks an idol thereby removes the character of instrument of worship. If one finds shards of vessels decorated with pagan symbols then either (1) it simply is a decorated vessel never intended for pagan worship, or (2) even if it was an object of worship there is a likelihood that a pagan broke and discarded it. As a general principle such a case (called “the doubt of a doubt”) in which the object may be permitted in each of the cases clears the object from any biblical prohibition.

57 In this case, possibility (1) is very remote; there is only one doubt which is not enough to remove the biblical prohibition.

Halakhah 2: “If one finds shards of vessels,” etc. Rebbi Yose in the name of Rebbi Johanan: Because most of them come from three-legged tables. Then also figures of a hand or figures of a foot? There is a difference since similar ones are worshipped.

58 Greek δέλτιον, -ικος, a (Delphian) tripod or small three-legged table. In this case the possibility of case (2) is remote.
It is written: The people from Babylon made Sukkot Benot, the chicken and its young, and the people of Kuta made the Nergal, the foot of Jacob and the foot of Joseph, I divined that the Eternal blessed me for your sake; the Eternal blessed the Egyptian’s house for Joseph’s sake. The people of Hamma made the Ashima, a sheep, as you say, the Cohen shall atone for him by the asham ram. The Awim made the Nibhan, a dog, and the Tartaq, a donkey. And the Sepharwites burned their sons in fire [to Adrammelekh and Annanmalekh the gods of Sepharwaim], peacock and pheasant.

59 Here starts a Geniza text (G), one leaf also edited by J. N. Epstein (Chapter 2, Note 361). The parallel in the Babli is Sanhedrin 63b.

60 2K. 17:30.

61 Some of the regions mentioned here and most of the deities are unidentified in cuneiform sources but Nergal is well identified as the god of the Underworld. Since the word does not correspond to any Semitic root, Nun is considered a prefix leaving a root רד “foot” which in turn is taken of the source of מיל “because of” in analogy to ערב “heel, in consequence of”.

62 Gen. 30:12.

63 Gen. 39:5.

64 Lev. 19:22. G quotes 5:16 instead. In both cases there is acoustic similarity between asham and ashima.

65 Both sources and the Babli read “the barker” against the MT which together with the rendered as Elamite by modern interpreters.

66 Parentheses added from G; while the interpretations clearly refer to the deities mentioned in the addition, in talmudic style the explicit quote is not strictly necessary.

67 Greek πάσης, δ. In Latin, taos, -i, m., is “a precious multi-colored stone”.

68 Latin phasiamus, also phasiana, -ae, f. (Edict. Diocl.). According to myth, it is metamorphosed Itis, a son of Tereus. He was killed by his mother and served to his father, then changed into a pheasant.
An idol which was broken\textsuperscript{69}, Rebbi Johanan said it is forbidden, Rebbi Simeon ben Laqish said it is permitted\textsuperscript{70}. Where do we hold? If in the future he would return it to its vessel, everybody agrees it is forbidden. If in the future he will not return it to its vessel, everybody agrees that it is permitted. But we hold if it is not indicated. Rebbi Johanan said, not indicated is as if he would return it to its vessel; Rebbi Simeon ben Laqish said, not indicated is as if he would not return it to its vessel. Rebbi Yudan the father of Rebbi Mattaniah said, if they were lying on their spot\textsuperscript{71} it is if he would return it to its vessel. Rebbi Simeon ben Laqish objected to Rebbi [Johanan]\textsuperscript{72}: Is it not written, \textit{therefore the priests of Dagon and all visitors to Dagon’s temple will not step on Dagon’s threshold}\textsuperscript{73}? He told him, this teaches that they honored the threshold more than Dagon. Rebbi Jeremiah in the name of Rebbi Hiyya bar Abba, the peoples of the world made one threshold; Israel made many thresholds; what is the reason? \textit{I shall visit on [any]}\textsuperscript{74} who skips over the threshold \textit{on that day}\textsuperscript{75}.

\textsuperscript{69} In the Babli, 41b, “if it broke spontaneously.” This is the reading of the correction in G over the line. Therefore one has to assume that the reading in the text simply means that a piece is before us and we do not know how it was broken. The argument in the text shows that the idol was a decoration of a vessel, not a statue.

\textsuperscript{70} Babli 41b.

\textsuperscript{71} All parts of the vessel are still available, so it can be glued back together.

\textsuperscript{72} From G, missing in L.

\textsuperscript{73} IS. 5:5. Since it does not mention Dagon’s hands and head, it proves that once a statue is broken it is not worshipped any longer by pagans. In the Babli the same verse serves to buttress R. Johanan’s position against R. Simeon ben Laqish.

\textsuperscript{74} Added from G (and the verse in MT); needed for the point of the sermon.

\textsuperscript{75} Zeph. 1:9.
If somebody finds an idol, Rav said, he breaks it limb by limb and it becomes insignificant, but Samuel said, it never can become insignificant\(^{76}\).

Rebbi Abin in the name of (Rebbi Simeon) [Samuel]\(^{77}\): This means\(^{78}\) if they are without base. But if they have a base, I am saying they come from shards.

\(^{76}\) Rav holds that an idol broken into little pieces cannot be reconstituted. Therefore it is no longer an idol and the shards may be used. Samuel holds that an idol which falls into the hands of a Jew is herem and forbidden for any use under any circumstance (Deut. 13:18). For him the only way an idol or its parts can become useable for a Jew is that a Gentile (a pagan) breaks it. The Babli (49b) explains Samuel’s position away.

\(^{77}\) Reading of L in (parentheses), of G in [brackets].

\(^{78}\) This refers to the last statement of the Mishnah, about hands and feet. If these are complete, not broken off from a base, the Mishnah applies; these are complete objects of worship. But if they are broken off a basis they are shards. Babli 41a/b.

**Mishnah 3:** If somebody finds vessels and on them the form of the sun, the form of the moon\(^{79}\), the form of a dragon\(^{80}\), he should bring them to the Dead Sea\(^{81}\). Rabban Simeon ben Gamliel says, on honored ones\(^{82}\) it is forbidden, on contemptible ones permitted. Rebbi Yose said, he grinds them and disperses them into the wind or throws them into the Sea. They told him, but then it becomes fertilizer and it was said, *nothing of the ban should cling to your hand*\(^{83}\).
79 According to Maimonides, not circles representing sun and moon but their astrological representation.
80 Greek ὅραμον, -οντος, ὃ, also “dragon-shaped jewellery”.
81 Made from precious metals. All others fall under the category of “contemptible”.
82 Deut. 13:18.

Halakhah 3: “If somebody finds vessels,” etc. They stated only “vessels and on them the form of the sun, the form of the moon,” therefore not any of the other planets. They only stated “dragon”, therefore not any snakes. What is a dragon? Any which has spikes on its neck. It was stated thus: “Rebbe Simeon ben (Azzai) [Eleazar] says, what is a dragon? Any which has spikes on its neck.” If it is smooth it is permitted. If one finds a dragon in the form of a something crawling it is forbidden. Something crawling and on it a dragon, he takes the crawling thing and throws away the dragon.

Samuel said, a cup which serves as base for a dragon is forbidden, a dragon which serves as base for a cup is permitted. Rebbi Abba in the name of Rav: Fragments of a dragon are permitted. If it was a whole dragon and broke, it is forbidden. But did the fragments not come from a whole one? Rebbi Hizqiah in the name of Rav: So it is: If one saw them bowing down before a whole dragon and then it was broken, it is forbidden."
83 While they are divinities, they are not actively worshipped.

84 Tosephta 5:2.

85 The reading of Tosephta, G, and the Leiden ms. before correction is “Eleazar”. In addition, while ben Azzai’s name was Simeon, he was not ordained and never is called “rabbī”. The correction is a corruption.

86 The neck on the snake-shaped vessel.

87 The word may mean either snake, or worm, or even a small rodent.

88 In the first case it may be an object of worship, in the second the dragon is a decoration.

89 Since a forbidden idol can become permitted only if a Gentile, not a Jew, breaks it (Note 76).

90 Then there is an indication that the idol broke by accident, not by intention, and the shards remain forbidden.

Where do we hold? If it is certain that they are worshipped, even the contemptible ones are forbidden. If it is certain that they are not worshipped, even the honored ones are permitted. But we must deal with the indeterminate case. Rebbi Crispus said, those cups belong to the contemptible category, for Rebbi Hiyya bar Abba had a pitcher and the (worth) of Rome was pictured on it. He came to ask Rebbi Johanan who told him, since water swims on top of it, it is a contemptible one. A drinking cup is contemptible since one immerses it in water. In the days of Rebbi Johanan they started painting on walls and he did not protest against it. [In the days of Rebbi Abun they started depicting by mosaics and he did not protest against it.]

(42d line 28) שארא יעביד עילוי מונכביים מ samt יכין קימיו בצבעים. אומר רבי קיספיא. כי אתא שאר לייב עיבא וההוא קוחץ דבעת צעימי עידומ י_CLOSED תבה. אתא שאר לייב עיבא. אומר לייב. מכין שקומיה עבר על אנכי זכר שליבינו וההוא. ביבים זכר כייבי עיבא לע קוחץ מאפו כלפי יכין.

أخذת יום קדש המתקיה מקניא ברכות זכר ולשכניהם ההוא. ביבים זכר כייבי עיבא לע קוחץ מאפו כלפי יכין.
91 In G: “garment”. The following sentences show that the text of L is correct even though Gen. r. 81(3) quotes R. Johanan to the effect that garments may be forbidden as pagan (based on Gen. 35:2).

92 A Syriac word as identified in Sokoloff’s Dictionary of Jewish Palestinian Aramaic.

93 The reading of G, תוחנה “fortune, destiny” is preferable over the reading of L, תוחנה “worth, value.”.

94 The vocalization is from G referring to Romae.

95 Greek κοβότιον, “Laconian drinking vessel used by soldiers; drinking bout; religious banquet”.

96 Since the paintings are flat, they are not prohibited by the Second Commandment.

97 Text of G, missing in L. As J. N. Epstein notes, any synagogue mosaic floor which shows figures (as opposed to text) must be dated after R. Abun’s time (about the year 300).

98 Rebbi Yose objected to the rabbis, is it not written: your sin which you had made, the calf? They told him, this teaches that he intended to examine them in the way one examines deviant wives: he strewed it on the surface of the water. He said to them, is it not written, and also Maakah, king Asa’s mother, he removed from power? They told him, is there proof from there? Asa cut down etc. He told them, he beat the bronze serpent to pieces. Was this an object of worship? Did not Moses make it? This teaches that Israel was erring after it until Hezekias came and removed it.

98 Babli 43b/44a, Tose hospa 3:19. The speaker is R. Yose the Tanna who objects to the statement that the idol has to be dumped into the Dead Sea; he brings examples of disposition of pagan idols in other ways.

99 Deut. 9:21.

100 Ex. 32:20. As usual, the argument is from the part of the verse which is not quoted, viz., he let the Children of Israel drink. The deviant wife has to drink water mixed with dust from the floor of the Sanctuary, Num. 5:11-31.


102 Since Asa burned his mother’s Ashera,
there is no doubt that burning a wooden statue is as good as bringing it to the Dead Sea.

103 2K. 18:4.

104 Here ends the Genizah fragment G

κατασκόπων ἄνωρον ὑποβάθρον ὅπου ἀντιτίθεμαι ὄντες καὶ ἀνένεμοι. 

κατασκόπους ἀνωρόν ὑποβάθρον ὅπου ἀντιτίθεμαι ὄντες καὶ ἀνένεμοι. 

(42d line 41) 

loam and the floor below: who put him in the hypothetical 

loam and the floor below: who put him in the hypothetical 

and the rabbin. Know 

and the rabbin. Know 

shekhinah below the 

shekhinah below the 

shekhinah. 

shekhinah. 

shekhinah. 

shekhinah. 

The verse says, they abandoned their idols; David and his men carried them away. But another verse says, David gave orders and they were burned in the fire. Rebbi Yose [ben Rebbi] Halalfa and the rabbis. Rebbi Yose ben Rebbi Halalfa says, what was of metal, David and his men carried them away. And what was of wood, David gave orders and they were burned in the fire. But the rabbis say, what Itai from Gat annulled, David and his men carried them away. And what he did not annul, David gave orders and they were burned in fire. How does Rebbi Yose [ben Rebbi] Halalfa confirm David and his men carried them away? They took them by their rims.

105 2S. 5:21. The verse implies that the idols were a valuable part of the booty. According to the Mishnah the idols should have been brought to the Dead Sea, not to Hebron.

106 1Ch. 14:12, another report about the same event.

107 This is the reading of א, which agrees with the name of the Tanna in other sources. 108 They assume that he was a Gentile and therefore able to break the idols to remove the prohibition and turn them into valuable metal scrap. Babli 44a 109 To grind them down as R. Yose prescribes in the Mishnah.
Mishnah 4: Procles ben Plosos\textsuperscript{110} asked Rabban Gamliel in Acco when he was taking a bath in the Bath of Aphrodite\textsuperscript{111}. He said to him, it is written in your Torah, *nothing banned should stick to your hand*\textsuperscript{112}: why are you bathing in the Bath of Aphrodite? He said to him, one does not answer in the bath\textsuperscript{113}. When he left he told him, I did not come into her domain, she came into my domain. One does not say, the bath was built as adornment for Aphrodite but one says, Aphrodite was made as adornment of the bath.

Mishnah 5: Another explanation. If one gave you lots of money, would you enter your temple naked, after an emission, or urinating before it? But this one stands over the sewer and everybody is urinating in its presence. It only says *their gods*\textsuperscript{114}; what is treated as a divinity is forbidden, what is not treated as a divinity is not forbidden.

\textsuperscript{110} In the Babli פֶּלְפֶּסְסָא פֶּלְפֶּסָא “philosopher”; in the Venice edition of Alfasi פֶּלְפֶּסְסָא פֶּלְפֶּסָא, but in most sources, including Maimonides’s autograph Mishnah Commentary the name is written as in the Yerushalmi Mishnah.

\textsuperscript{111} According to Maimonides there is no problem since Aphrodite is the symbol of the planet Venus, which was exempted from the general prohibition of pagan symbols in Halakhah 3 Note 83.

\textsuperscript{112} Deut. 13:18.

\textsuperscript{113} One may not discuss religious subjects while naked. Cf. Berakhot 2:3 Notes 116-119.

\textsuperscript{114} Deut. 12:30; the verse which is the basis of Mishnah 6.
Halakha 4: “Proclos ben Plosos asked,” etc. Where do we hold? If he asked him about practice in the bath he should have answered; if he did not ask him about practice in the bath he should not have answered. As Rebbi Jacob bar Idi said in the name of Rebbi Joshua ben Levi: One asks about practice in the bath while in the bathhouse, about practice in the toilet while in the toilet. As when Rebbi Simeon ben Eleazar went to the bath with Rebbi Meir, he asked him, may one rinse? He told him, it is forbidden. May one dry himself with a towel? He told him, it is forbidden. But did not Samuel ask Rav, may one say “Amen” at a dirty place? He told him, it is forbidden, and it is forbidden that I told you that it is forbidden. It was found stated, one asks about practice in the bath while in the bathhouse, about practice in the toilet while in the toilet. Rebbi Yudan, the father of Rebbi Mattaniah, said, he asked him about practice in the bath but it is not done to answer in the bath. Rebbi Samuel bar Eudaimon said, he asked him about practice in the bath but the steam in the bath is bad for the teeth. The colleagues, Rebbi Hama bar Yose in the name of Rebbi Hoshia, Rebbi Ze‘ira in the name if Rebbi Joshua ben Levi: He answered him in an evasive answer, for he could have replied about Baal Pe‘or whose worship only consists in exposure and defecation. What about it? What is treated as a divinity is forbidden, what is not treated as a divinity is not forbidden.

115 Since the instruction that one does not answer in the bath, i. e., in the room where people are naked, is a religious instruction forbidden at that place.
116 The main source for the following is Sabbath 3:3 (6a l. 51, v), Babli Sabbath 40b.
117 As explained in Sabbath, they went to bathe in the hot springs of Tiberias on the Sabbath. It is forbidden to take a hot bath in water which was heated, but not in water which is naturally hot. But then one has to be careful not to rinse oneself outside the water flowing from the source since water spilled on the earth outside would fill in depressions in the ground, which is prohibited work.

118 Similarly, one may not use a bath towel on the Sabbath since squeezing out water from a towel (or a sponge) is forbidden work.

119 Since he was asked at a place with a bad smell. He disagrees with R. Jacob bar Idi.

120 In Sabbath: “One does not ask.” This supports Rav and seems to be the original version. Unfortunately, א is damaged at this passage.

121 In א: “is not polite”.

122 Babli 44b.

123 Mishnah Sanhedrin 7:12.

124 What would be the correct answer?

Mishnah 6: If Gentiles worship mountains and hills; these are permitted but what is on them is forbidden, as it is said, do not covet silver or gold on them and take for yourself. Rebbi Yose the Galilean said, their gods are on the mountains, the mountains are not their gods. Their gods are on the hills, the hills are not their gods. Then why is an Asherah forbidden? Because it was held by human hand, and anything held by human hand is forbidden.

125 For agricultural use; the ground and what grows on it is not forbidden as long as it is connected to the ground.

126 Deut. 7:25. If a mountain top is covered in gold or silver, the cover has to be removed and destroyed; only the ground itself is permitted.

127 Deut. 12:2.

128 A holy tree (Mishnah 11), which is connected to the ground and by the argument of Note 125 should be permitted as building material or fire wood.

129 It was planted.
Halakhah 6: “If Gentiles worship mountains,” etc. Rebbi Ze’ira, Rebbi Yose bar Hanina in the name of Rebbi Hoshiaia: One verse says\textsuperscript{126}, do not covet silver or gold on them and take for yourself. And one verse says\textsuperscript{130}, silver and gold which is with them. If on them why with them, and if with them why on them? Since on them refers to something which is particular for them and an adornment for them\textsuperscript{131}, also with them refers to something which is particular for them and an adornment for them.

Rebbi Johanan in the name of Rebbi Yannai: Anything which one introduced inside the lattice work\textsuperscript{132} he made forbidden; e. g., money pouches. Rebbi Yasa said, we had a note that (return) [this]\textsuperscript{133} of Rebbi Hoshiaia disagreed with Rebbi Yannai, but it is not so; it supports it. Since on them refers to something which is particular for them and an adornment for them, also with them refers to something which is particular for them and an adornment for them; this excludes money pouches\textsuperscript{134}. Rebbi Abba in the name of Rav Jehudah: Even water and salt. Salt to rub and water to rinse\textsuperscript{135}. And this is “even”? But e. g., water and salt\textsuperscript{136}.

\textsuperscript{126} Deut. 29:16.
\textsuperscript{130} Since the mountains themselves cannot become forbidden, only adornments made explicitly for pagan worship can be forbidden. Therefore also of the contents of a dwelling only idolatrous objects can be forbidden for all usufruct. Babli 51b.
\textsuperscript{132} The inner part of a temple, cf. Chapter 2:3, Note 219.
\textsuperscript{133} The text of L (in parentheses) is clearly a scribal error; one has to follow the text of 1 [in brackets].
134 This seemingly contradicts R. Yannai's statement.
135 To polish the statues.
136 It is obvious that in general Gentiles' water and salt are permitted. They become forbidden only by being introduced into the inner temple for idolatrous purposes. So also a Gentile's wallet and his money are permitted. Only by being introduced into the inner temple the money becomes forbidden. The statement of R. Yannai is a necessary complement to that of R. Hoshia and vice-versa. Babli 51b.
disagree about something which is not alive and Rebbi Abun bar Hiyya comes to tell you that the *bara'ita* refers to living things? If they disagree about something which is not alive; therefore a living thing is forbidden\(^{145}\). Then something which is not alive should be forbidden *a fortiori*\(^{146}\). This is that you should not say as you say there, anything living while it cannot become forbidden for a private person it becomes forbidden for Heaven, so similarly anything which is not yours even though it cannot become forbidden for a private person it becomes forbidden for Heaven\(^{147}\).

137 This paragraph is from *Kilaim* 7:4, Notes 46-48 (2).

138 Added from both parallel texts. The reference is to Mishnaot *Kilaim* 7:4,5. If a person grows vegetables or grain in his vineyard, everything becomes forbidden for usufruct. But if he causes such a growth on another person's land, R. Meir holds that the crop is forbidden and the owner of the land has to sue the culprit for damages; R. Yose and R. Simeon hold on the authority of R. Aqiba that “nobody can sanctify anything which is not his.” In our case, anybody who worships an animal or an object which is his, made it forbidden for usufruct for himself and everybody else. But if the object was not his property, for R. Yose and R. Simeon it cannot become forbidden for anybody.

139 The fifth-generation Amora.

140 Any living animal which is worshipped is an animal and not an idol and cannot be forbidden.

141 This word is not in the parallel text; the context and the following paragraph make it clear that it is a scribal error.

142 The comparison with *Kilaim* is misleading. The relevant Mishnah is *Temurah* 6:1 where it is stated that an animal used for idolatry (or bestiality) is unfit as sacrifice, irrespective of ownership. For sacrifices there is no dispute between R. Meir and R. Yose. Babli *Temurah* 28a.

143 While it is clear from our Mishnah that if anybody worships wild standing grain it will not be forbidden since it is connected to the ground (but if it was sown for idolatrous purposes then it is an *Asha'ra*.) It now is stated that cut and milled produce will only be forbidden if used illegitimately by its owner, not by any third person.

144 While this word is not in 1, it is better to retain it.

145 If R. Abun bar Hiyya disagrees with R. Yose in the name of Rebbi Ila. He should have mentioned an animal, not fine flour. For if R. Meir and R. Yose disagree about plants then one must assume that R. Yose agrees with R. Meir about animals.

146 Since animals have a privileged status; R. Yose cannot agree with R. Meir about their status.

147 R. Abun bar Hiyya disagrees with R. Yose in the name of Rebbi Ila in a matter of principle; he holds that worshipping something which is the private property of a third person without knowledge or acquiescence of that third person has no
influence on the status of the property whether for profane or sacral purposes.

If somebody worshipped an egg, Hizqiah said, he did not make it forbidden; Rebbi Johanan said, he made it forbidden. Rebbi Ze'ira said, they disagree about an egg. The colleagues say, they disagree about pebbles in a river bed. Rebbi Huna said, a verse supports what the colleagues say: Your part is with river pebbles; these are your destiny. The strength of Hizqiah is from the following: “Then why is an Ashera forbidden? Because it was held by human hand, and anything held by human hand is forbidden.” Everybody agrees that wheat is forbidden; as Rebbi Hanina bar Yasa said in the name of Rav Jehudah: The roots of wheat split the earth to a depth of 50 cubits; the soft roots of a fig tree split rock. Then what do the roots of the carob and the roots of the sycamore? Rebbi Hanina said, once every thirty days the abyss wells up and drenches them. What is the reason? I, the Eternal, am watching over it and water it in moments. It was stated: Rebbi Simeon ben Eleazar says, this teaches that the earth drinks only according to its hardness.

149 For Hizqiah the egg is considered under the rules of animals; for R. Johanan only the chick would qualify, not the egg.
150 These are egg shaped. While they are products of nature, they are no longer connected to the ground.
151 Is.57:6.
152 The remainder of the paragraph has no connection with the topic of the Halakhah and the preceding text; it also appears in Berakhot 9:3 Notes 170-174, Ta'anit 1:3 (64b l.30); its source seems to be Gen.
rabba 13(19) on Gen. 2:6. The different name traditions are noted in the Notes to Berakhot. 153 Is. 27:3.

An egg of pagan worship which turned into a chick. Rebbi Haggai in the name of Rebbi Josia: Cahana and Hizqiah disagree. Cahana said, it is permitted, Hizqiah said, it is forbidden. There is a difficulty in the opinion of Hizqiah: how is it possible for an egg of pagan worship to become a chick? Where do we hold? If somebody squashed it, there is no chick. If he brought it inside the lattice enclosure, come and look: If he worshipped it it is not forbidden; because he brought it inside the grating it should be forbidden? Rebbi Yudan the father of Rebbi Mattaniah said, explain it if he used to tow the idol.

If an ‘orlah walnut was planted or an egg dedicated to the Temple became a chick. Rebbi Yasa said, Cahana and Rebbi Johanan disagree. Cahana said it is forbidden and Rebbi Johanan said it is permitted. Rebbi Ze’ira said before Rebbi Yasa, did not Rebbi [Johanan] say it is permitted, does he not redeem it as from the time it is sown? There came Rebbi Hanania and Rebbi Jonah, Rebbi Eleazar in the name of Cahana: He redeems it as from the time it is sown. Rebbi Hanania in the name of Rebbi Phineas
corrects it: Cahana said it is forbidden and he redeems it as it is now; Rebbi Johanan said it is permitted and he redeems it as from the time it is sown.

154 These two paragraphs are also in 'Orlah 1:8, Notes 200-208, y. The scribe of L wrote only the first and last few words and then: “one continues in Avodah zarah Chapter 3, Halakhah 6, ‘if Gentiles worship’, to the end.” The text was then added by the first corrector in a somewhat shoddy way, from a source different from the text here. The full text is in the Rome Zera 'im ms.

155 This is the text here. In 'Orlah: “he fenced in”, confirmed by the Rome text. This text can be understood since it mentions the walnut which was planted at the beginning of the first paragraph, not the second as in the text here. If a walnut tree was planted to close an opening in the lattice work, this certainly makes it forbidden as an Ashera. It is hard to see how to tow anything using an egg; the difference between the two texts is that between דנ and רד. Neither of the two expressions makes much sense if applied to an egg.

156 The walnut was forbidden for all usufruct; the status of the tree is in doubt.

157 It is property of the Temple and cannot be used without redemption. This case is not in dispute.

158 Everybody agrees that the new tree is not 'orlah. According to Cahana the original prohibition has not disappeared, according to R. Johanan the situation is parallel to that of heave grain (restricted as food to pure Cohanim) which was used as seed grain; the crop needs only token redemption (Mishnah Terumot 9:4).

159 From the text in 'Orlah, missing here.

160 This refers to the walnut. If the tree may be used, it never was 'orlah; the redemption is symbolic and can be effected by a token payment.

161 It needs redemption for its full value; in the case of the 'orlah tree the redemption money has to be destroyed.

Mishnah 7: Rebbi Aqiba said, I shall explain it to you. Any place where you find a high mountain, or an elevated hill, or a sprightly tree, know that there is idolatry.

162 Deut. 12:2 reads: You shall certainly destroy all the places where the peoples from whom you will inherit worshipped their gods, on high mountains, and hills, and under each sprightly tree. This explains clearly that not the place is forbidden but the idol and its temple to be found there.
Halakhah 7: “Rebbi Aqiba said, I shall explain it to you,” etc. We have stated אברך. Some are stating אברך. He who says “we understand.” But he who says “we bring.”

163 The hapax אברך is derived from the root יברג “to transport”. Both verbs are used in hif'il.

Rebbi Borqai stated before Rebbi Mana: This teaches that the Canaanites did not leave any mountain or hill where they did not worship. But do we not understand to say, anything alive, while not forbidden for a private person, is forbidden for Heaven? How could the Temple have been built? By the order of a prophet; David went up following the word of Gad which he had said by the Hand of the Eternal.

165 If it was worshipped as pagan deity, Note 142.
166 While a mountaintop is perfectly good for agricultural use, it should be forbidden as a place for the Temple. Therefore the place could not have been selected by humans. It is not a mountain top.
167 1Chr. 21:19, slightly misquoted.
crawling animal\textsuperscript{171}, as it is said\textsuperscript{172}, \textit{you shall treat it as an abomination}. Rebbi Aqiba says like a menstruating woman as it is said\textsuperscript{173}, \textit{you shall throw it away like feeling miserable; you will call it excrement}. Since the menstruating makes impure by load\textsuperscript{174}, also idolatry makes impure by load.

168 His house and the pagan temple share a wall.
169 In the Babli: 4 cubits. His wall should be separated from the temple by 4 cubits. The text of Maimonides is that of the Yerushalmi.
170 He may take half of the building material of the common wall for his own use; the remainder is forbidden for all usufruct for any Jew.
171 As described in 
\textit{Lev.} 11:29-38, it makes impure by touch. This applies also to the stones which remain his property.
172 
\textit{Deut.} 7:26. In \textit{Lev.} 11:40-41, all crawling things which are forbidden as food are called \textit{abomination}, including those which make impure by touch.
173 \textit{Is.} 30:22. In \textit{Lev.} 12:2 menstruation is called "the separation of her feeling miserable".
174 In \textit{Lev.} 15:20-21, it is stated that anything she lies on becomes an original source of impurity. This means that if a woman in her period lies on top of ten mattresses and somebody touches the lowest one, which the woman never touched, he becomes impure as if he touched the woman herself. For R. Aqiba anybody who carries an idol becomes impure even if he never touched the idol.
Halakhah 8: “If one’s house was connected to a house of pagan worship,” etc.

There is written abomination about the menstruating women, abomination about vermin, abomination about idolatry. About the menstruating woman, for anybody who would commit any of these abominations. About vermin, do not eat any abomination. About idolatry, and do not bring any abomination into your house. But I do not know for which purpose it was compared. Rebbi Aqiba says, it was compared to abomination regarding the menstruating woman. As the menstruating woman impurity by load, also idolatry imparts impurity by load. Or since the menstruating woman imparts impurity through a cover stone, does idolatry impart impurity through a cover stone? Rebbi Zeriqa in the name of Rebbi Hanina, but some say in the name of Rav Hisda: Rebbi Aqiba agrees with the Sages that idolatry does not impart impurity through a cover stone. But the rabbis say it was compared to abominations of vermin. As vermin imparts impurity by motion, so also idolatry imparts impurity by motion. Or as vermin in the size of a lentil imparts impurity, does also idolatry in the size of a lentil impart impurity? Rebbi Ze’ira, Rebbi Isaac bar Nahman, Rebbi Eleazar, Rebbi Abbahu in the name of Rebbi Johanan: They were yoked to Baal Peor and ate sacrifices to the dead. As the dead in the size of an olive imparts impurity, so idolatry in the size of an olive imparts impurity. Or since a corpse imparts impurity once a person puts his finger tips in, could I think that idolatry imparts once a person puts his finger tips in? Tearing down, tearing down one infers from the leprous house. Since in a leprous house when he entered with his head and most of his body, so idolatry when he entered with his head and most of his body. Rebbi Hanina said, this means that the impurity of idolatry is not consistent.
does one compare if for the facile [impurity] and does not compare for the strict? Rebbi Mana said, it is consistent. Why was it compared to a corpse and to vermin? To inform in both cases about the facile [impurity] attached to it\(^{189}\). This is for a broken idol. But an entire one even in the most minute size\(^{190}\), as Rebbi Yose ben Rebbi Abun\(^{191}\) said, Rav Hama bar Gorion in the name of Rav: Baal was the penis gland in the form of a bean. What is the reason? They selected the Baal of circumcision as god\(^{192}\).

175 This Halakhah also is Halakhat 9:1 in Šabbat (א). Evidence points to Šabbat as the primary source. Much of the argument is found in Babli Šabbat 82b-83b.
176 Lev. 18:29. The verse refers to all prohibitions of a sexual nature.
177 Deut. 14:2. The verse refers to all food prohibitions.
178 Deut. 7:26. This verse refers uniquely to idols and idolatry.
179 Stone is impervious to impurity. In general, anything not susceptible to impurity cannot transmit impurity. The one and only exception is impurity caused by genital discharges where impurity by load (Note 174) applies to anything under the affected person and even a stone plate covering a mattress will not shield the mattress from impurity if a person afflicted by a genital discharge sits on the stone. Babli Niddah 69b.
180 In Šabbat: Rav Jehudah. On one hand, the tradent in Šabbat is mentioned as R. Zeriqan, the Yerushalmi form, not the Babli form Zeriqa as here; but this is to be explained by the babylonized spelling of the text of the present Tractate. On the other hand, the tradent in the Babli (Šabbat 82b) is R. Eleazar, a known student of R. Hanina.
181 Here one has a serious discrepancy

between the technical terminology of the Babli and the Yerushalmi. In the Babli impurity by motion is a form of impurity by load: if a person suffering from a genital discharge moves something indirectly or is moved with it, he imparts impurity. In the Yerushalmi this is consistently designated by its Mishnaic name, יִכְתַּבֵּר, “stepping on.” This kind of impurity emphatically does not exist for vermin, or anything other than genital discharges. Therefore the “motion” mentioned here must be that of a person’s hand touching an impure object. Transfer of impurity by touch is the only one mentioned for the eight kinds of impure vermin.
182 Mishnah Ahilut 1:8. This minimum size for generation of impurity does not apply to complete limbs.
183 Ps. 106:28.
184 This refers to “tent” impurity (Ševuot 2:1 Note 34) which is created by any part of a person’s body being under the same roof as a corpse, even if it is only a finger tip.
185 A house afflicted with recurrent “leprosy” must be torn down (Lev. 14:45). Pagan altars must be torn down (Deut. 12:3). By the nature of the topics, the verb יִכְתַּבֵּר is used in the singular in the first case, in the plural in the second. Therefore this is a
comparison (משה), not an “equal cut” (מהירד ושתי); the laws will be similar, not exactly identical.

186 Based on Lev. 14:46, which decrees impurity for anybody coming into the house, Sifra Mesora’ Perek 5(4), Mishnah Negaim 13:8.

187 In Sabbath: Hanania. The latter attribution is correct since he must have been a contemporary of R. Mana (II).

188 Neither R. Aqiba nor the rabbis are consistent in their comparisons.

189 The impurity of idols and idolatry should follow the rules common to impurities generated either by dead vermin or by bodily discharges. This argument is known in the Babli tradition as הד צהזה the equal part;” cf. H. Guggenheimer, Logical Problems in Jewish Tradition, in: “Confrontations with Judaism”, ed. Ph. Longworth, London 1966, p. 185.

190 This is consistent with the impurity of animals as food, where a complete creature always is biblically forbidden irrespective of size (cf. Nazir 6:1 Note 64).

191 In R. Huna.

192 Jud. 8:33. Instead of “Baal of Covenant” one reads “Baal of circumcision” referring to the place of circumcision. This identifies the Semitic Baal with the Greek and Roman Priapus.

What is Rebbi Aqiba’s reason? You should treat it as an abomination, like a menstruating woman. What is the rabbis’ reason? You should detest it, like vermin. How do the rabbis uphold Rebbi Aqiba’s reason, you should treat it as abomination? Treat it as excrement, make it vile. What means “make it vile” for the rabbis? Rebbi Samuel, Rebbi Abbahu in the name of Rebbi Eleazar: you shall call it excrement. What is called God’s Face is called Dog’s Face. Spring of the Cup is called Spring of the Thorn. The
Place of Fortune is called the Place of Undress. Rebbi Tanhumah (asked) [in the name of] Rebbi Huna: It is written, *The Ai which is near Bet-Awen East of Bethel*. Earlier it was called Bethel but now one calls it Bet-Awen. It was stated in the name of Rebbi Eleazar: If one does not want to call it ‘Omda one calls it ‘Amida since the flow of urine is called ‘amida. How (do the rabbis) [does Rebbi Aqiba] interpret you shall call it excrement? Rebbi Yose ben Rebbi Abin, Rebbi Huna in the name of Rav Josef: from (where) [here] that one does not tell anybody to leave unless he entered with his head and most of his body.

193 Deut. 7:26.
195 In א: King’s face.
196 All these places and most of their idolatrous meanings are unknown. A similar list is as Tannaitic text in the Babli 46a, Tosephta 6:4
197 The reading of *Avodah zarah* is in (parentheses), that of Sabbath in [brackets].
198 Jos. 7:2.
199 It seems that the translator of the LXX read the verse in the way of the Talmud and eliminated the mention of Bet-Awen, “the House of Iniquity”, as a gloss, as accepted by the moderns. (However, E. Täubler in a marginal Note to his copy of M. Noth’s *Das Buch Josua*, Tübingen 1938, identifies Bet-Awen as the old name of “The Ai (ruin); cf. Arabic *أونا* “calm, tranquillity").
200 This piece is truncated here but it is in bad shape both here and in Sabbath (and Yalqut Jos. ad 7:2). It is intelligible in Gen. rabba 39(24), on Gen. 12:8, the first mention of The Ai in the Bible, following the interpretation of J. Levy:

> He transferred from there to the mountain, East of Bethel. In the past it was called Bethel but now it is called Bet Awen. Rebbi Eleazar said, it did not merit to be called the House of Work but it is called the House of Baptism. There, they are calling a good worker but the chamber pot ḥemidah.

201 The church.
202 Syriac ἡμέαν.
203 Accusative of ἀμίς, -ίδος (identified by Musaphia.)
There exists a *bara'aita* which says, idols are like a menstruating woman and its appurtenances are like a menstruating woman. Also there exists a *bara'aita* which says, idols are like a menstruating woman and its appurtenances are like crawling animals. The one who says, idols are like a menstruating woman and its appurtenances are like a menstruating woman, is understandable. But the one who says, idols are like a menstruating woman and its appurtenances are like crawling animals, is it not called “unwell” only for its appurtenances? Explain it if they were engraved on its body. As Rebbi Jacob of Kefar Hanan said, explain it if one worships the *ephod* itself, similar to what is written, *Gideon made an ephod*. Our Mishnah follows him who said, idols are like a menstruating woman and its appurtenances are like a menstruating woman, and we have stated: “its stones, its wood, and its dust make impure like a crawling animal.” Explain it if he worshipped the house itself, as Rebbi Abba, Rab Huna said in the name of Rav: One who worships a house makes it forbidden. Rebbi Ze’ira, Rebbi Abbahu in the name of Rebbi Johanan: If somebody dedicates a house one does not commit larceny with it. And he who says, one does not commit larceny with it, can he
make it forbidden? Rebbi Haggai objected before Rebbi Yose, does not a Mishnah disagree with Rav? “A trough in a rock: one does not fill from it, and one does not sanctify with it, and one does not sprinkle with it, it does not have to be fastened with a tightened cover, and it does not invalidate a miqweh. If it was a vessel and he fixed it with lime, etc., up to it invalidates a miqweh.” Because he excavated it and after that combined it. Then if he fixed it and after that excavated it, what do you do with it? Explain it following Rebbi Johanan that the hewing of stones is the completion of work on them. Does this not disagree with Rebbi Simeon ben Laqish who said, an idol which was broken is permitted? And so we are thinking to say if in the future he can restore it to its vessel it is forbidden according to everybody. Explain it if he worships every single stone and then builds with them. Does this not disagree with Rebbi Johanan, as Rebbi Johanan said, an idol which was broken is forbidden? And so we are thinking to say if in the future he cannot restore it to its vessel it is permitted according to everybody. Explain it if he worshipped a vine and afterwards planted it.

204 At some places, this paragraph has been shortened from the text in Sabbath to the extent as to become unintelligible without recourse to that text.
205 The first opinion is the teaching of R. Aqiba in the Mishnah, the second is ascribed to R. Aqiba in the Babli, Sabbath 83a.
206 The full text of Is. 30:22 (quoted in Sabbath) which is the base of R. Aqiba’s argument reads: You will defile the cover of your silver statues and the clothing of your golden cast; you shall throw it away like feeling miserable, you shall call it excrement. Therefore the reference of “feeling miserable” which is the description of a female period refers to appurtenances only. The second version of the position of R. Aqiba seems untenable.
207 The formulation in Sabbath is better: R. Jacob said (as an alternative explanation) that the statue and its ornamental vest were two separate objects of worship. Either explanation is possible.
208 Since this sentence in the Mishnah precedes the statement of R. Aqiba, it is implied that R. Aqiba disagrees and imposes the impurity of niddah also on the stones which form the shell of the house of worship but are not the object of worship.
209 A comparison with the text in Sabbath shows that the sentence has to be split in two. First it is stated that the house will be strictly impure if it was worshipped. Then a question is missing, quoting the following Mishnah 9: Only a house originally built as a temple is permanently forbidden; all others can be cleansed by removing the idol and all installations and ornamentations made for it. How could one decree severe impurity which can be easily eliminated? On this
Rav says that even a house not built for worship becomes permanently forbidden as if it had been built as a pagan temple, if itself was worshipped. Babli 47b, Me'ilaḥ 20a.

210 In Sabbath one reads: “R. Ze’ura, R. Ab-bahu in the name of R. Johanan, if one dedicates his house one commits larceny with it.” The reading here is confirmed by Halakah 9.

One compares the rules concerning a pagan temple with those of a house dedicated to the Temple (Lev. 27:14-15). Improper use of dedicated things is larceny which must be expiated by a sacrifice and payment of a fine, (Lev. 5:14-16). Just as real estate cannot become forbidden by idolatry, larceny by improper use of dedicated objects does not apply to real estate. If a house is considered real estate, it cannot become forbidden by worship, and its improper use while in the possession of the Temple cannot trigger a fine for larceny. If it is not considered real estate since the building materials were moveables before being used, it can become forbidden and improper use can trigger the fine.

211 Mishnah Parah 5:7. The ashes of the Red Cow, used to purify a person from the impurity of the dead, must be strewn on “flowing water in a vessel” (Num. 19:17). A vessel is movable; therefore a trough hewn into the rock is not a vessel. The water flowing from the source into the trough becomes standing water. Therefore it may be used neither (1) to fill a vessel for the ashes, nor (2) to put some ashes in the water, “to sanctify it”, nor (3) to sprinkle the water on impure persons to purify them.

In addition, a corpse in a “tent” makes everything in the tent impure including the contents of vessels whose cover is not tightly fastened (Num. 19:15). Since the trough is no vessel, if it is under one roof with a corpse it only needs to be covered but the cover does not have to be fastened.

A miqweh (ritual bath) has to contain 40 seah of water. It becomes invalid if 3 log (1/4 seah) of water from a vessel is poured into it. If the trough is not a vessel, its water cannot invalidate the miqweh. On the other hand, if the trough was a vessel before it was fastened in the rock, it can be used for the ashes of the red cow, and its water will disqualify the miqweh.

Since a house was not a vessel before being connected to the ground, it should be considered real estate and not be subject to prohibition because of worship.

212 A vessel which is permanently fixed to the ground remains a vessel and can become forbidden.

213 A piece of loose rock which was cemented to the ground and then a trough was hewn from it does not become a vessel. Then why should a house become forbidden by being worshipped since it becomes a house only after being connected to the ground?

214 It is true that a finished house not built as a temple cannot become forbidden. But if the finished stones for a stone building were worshipped before being cemented in the house they already are forbidden and do not become permitted by use as building blocks.

215 The Mishnah which subjects the building material of the collapsed wall to the rules of idolatry. Babli Me'ilaḥ 20a.

216 The statement of R. Simeon ben Laqish and the opposing statement of R. Johanan
only refer to situations where it is not clear whether the idol can be restored or not.
217 Then each individual stone remains forbidden; there is no contradiction to Mishnah 10.
218 This refers to a holy tree which is worshipped as Ashera (Mishnah 11) but where no idol is found buried under it. Then as connected to the ground it should not be part of the real estate and not be forbidden. It becomes permanently forbidden only if it was planted as a holy shoot.

Levi said, one who worships a house makes it forbidden\textsuperscript{209}, a cave he does not make forbidden\textsuperscript{219}. What is between a house and a cave? Rebbi Hanina ben Rebbi Hillel said, a house was separated at some time; a cave never was separated.

\textsuperscript{220} Rebbi Johanan explained the Mishnah\textsuperscript{221} about a proselyte and a pagan who inherited from their pagan father. Why does he not explain it when idol worship came and built next to him? It was stated: If a house of idol worship was built next to him and then left it is permitted\textsuperscript{222}. But for a proselyte and a pagan who inherited from their pagan father, it is forbidden. It was stated: If a house of idol worship was built next to him and then left it is permitted. But if he came and built next to idol worship the entire house is for idol worship\textsuperscript{222}. Rebbi Yose said, our Mishnah says so, “If it was his and the idolatry’s, it is judged half by half.”\textsuperscript{223}.

\textsuperscript{219} Even if the cave was excavated for purposes of idol worship it does not lose its character as real estate.
\textsuperscript{220} This paragraph is not in \textit{Sabhat}.
\textsuperscript{221} To explain how the house of a Jew and a pagan place of worship may share a wall.
\textsuperscript{222} If the Jew’s house was there before the pagan, it is not touched by temporary use of the adjacent house as place of pagan worship. But if the Jew builds in disregard of the injunction of the Mishnah to construct a separate wall inside his real estate he is fined.
\textsuperscript{223} The Mishnah might be referring to a house built after the pagan place already existed, not a proselyte brother to a pagan.
Mishnah 9: There are three houses. A house which one built originally for idolatry is forbidden. If he whitewashed it or ornamented it for idolatry and renovated, one removes what he renovated. If he introduced there an idol and removed it, it is permitted.

Halakhah 9: “There are three houses,” etc. Rav and Rebbi Johanan both are saying, the Mishnah treats their entry into the Land. The opinion of Rav, who said that one who worships a house makes it forbidden, is the reason that he explains it by their entry into the Land. Following the opinion of Rebbi Johanan, who said that if somebody dedicates a house one does not commit larceny with it, could he not have explained it by somebody who was worshipping the house? {The effect of} one who worships a house can be voided. At their entry into the Land it could not be voided. What could he do? He removes its clapboards and it is permitted.

Rebbi Ila in the name of Rebbi Eleazar: Only if he brought an idol into it. In the opinion of Rebbi [Eleazar] there are two houses. But have we not stated three? Here temporarily, there permanently.

224 Deut. 7:5 is an unconditional commandment to destroy all pagan altars and Temples in existence at the time of the conquest. This agrees with the statement that the house in the first case is absolutely and irrevocably forbidden, since in all other cases a partial destruction of the house will remove the prohibition.

225 Since he considers a house as a kind of movable (Note 209), his problem is that the first rule of the Mishnah should apply not only to a house built as a pagan temple but
also to one which was worshipped. But the effect of worship can be undone (Halakhot 14-16); only the commandment Deut. 7:5 is absolute.

226 Since a house is real estate, it cannot become forbidden by simply being worshipped. But if a Jew built it for purposes of idolatry, it becomes forbidden by an act of idolatry (Mishnah 4:4). Therefore the first case of the Mishnah could also be referred to a case possible today. One does not expect a rule in the Mishnah which became obsolete some 1500 years before its formulation. The answer to be given is the same as in the case of Rav.

227 To desecrate the house and therefore nullify its pagan status.

228 This now refers to the second case, a house renovated for the purpose of idolatry. As property of the Jew it becomes forbidden only by an act of pagan worship, not by intention (Mishnah 4:4).

229 Missing in the text; added from Halakhah 10 as required by the context.

230 Since the presence of an idol is required in both cases 2 and 3, what is the difference? In case 3 the idol is temporarily in the house; one removes it and the house is permitted. In case 2 the intention is a permanent installation of the idol; therefore not only the idol but all installation has to be removed. Also for R. Eleazar there are three distinct cases.

Mishnah 10: There are three kinds of stone. If he quarried them from the start as pedestal it is forbidden. If he whitewashed it and ornamented it for idolatry and renovated, one removes what he renovated. If he put an idol on it and removed it, it is permitted.

231 Greek βομώς. The expression is used exclusively for pedestals of idols (including statues of emperors). From the comparison with the next Mishnaiot one must assume that a pedestal in itself was an object of veneration.
Halakhah 10: “There are three kinds of stones,” etc. Rebbi Abba in the name of Rav: This implies that what is cast for idolatry is immediately forbidden. Rebbi Jeremiah in the name of Rebbi Eleazar: This implies that if one casts a cup for idolatry it is immediately forbidden.

Rebbi Ila in the name of Rebbi Eleazar: Only if he put an idol on it. The opinions of Rav seem inconsistent. There he says, if one casts a cup for idolatry it is immediately forbidden, and here he says so. Explain it following what has been stated: “A Gentile’s idol is immediately forbidden, but a Jew’s when it was worshipped.” There is disagreement about an idol, maybe also for its appurtenances? Rebbi Simeon in the name of Rebbi Eleazar: There is disagreement also about appurtenances.

Rebbi Ila in the name of Rebbi Eleazar: Only if he put an idol on it. In the opinion of Rebbi Eleazar there are two stones. But have we not stated “there are three stones”? Here temporarily, there permanently.

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232 The first part of the Mishnah is not only about stones quarried but about everything intentionally manufactured as an idol. Therefore if a metal statue was cast, the process of casting makes it forbidden even before it is polished and worshipped.

233 A cup is an implement of worship; it is not an object of worship. The statement of R. Eleazar is stronger than that of Rav. The Babli disagrees, 52a.

234 This refers to the second case in the Mishnah, where a stone quarried indifferently is adorned to become an altar.

235 It seems that one has to read: R. Eleazar.

236 Why for a cup it is immediately forbidden but for a decorated stone only by actually being used in idolatry?

237 Mishnah 4:4. It is presumed that only a Gentile would make something from the start for idolatry; the most a Jew would do is to adorn an object.

238 In Halakhah 4:4 there is an opinion to the reverse: the idol of a Gentile becomes forbidden only by being worshipped, the Jew’s idol immediately upon acquisition or manufacture.

239 Even though Mishnah 4:4 and the corresponding baraita are formulated for idols, they are valid for all implements of idolatry. The Babli disagrees, 52a.

240 This is completely parallel to the corresponding paragraph in Halakhah 9.
Mishnah 11: There are three kinds of *Ashera*. A tree which originally was planted for idolatry is forbidden. If he cut and shaped it for idolatry and it grows new shoots, one removes what grew newly. If he puts an idol under it, when he makes it invalid it becomes permitted.

241 While the tree is still standing on the ground. A cut tree is not an *Ashera*.

242 Under a tree not previously grown for idolatry.

Halakhah 11: “There are three kinds of *Ashera,*” etc. Rebbi Immi in the name of Rebbi Simeon ben Laqish said, if he engraved engravings in it it cannot become invalidated. This is necessary: even if he removed the engravings. It was stated: If he grafted, he has to remove what he grafted. Rebbi Yannai said, only if he grafted for idolatry. Rebbi Hila in the name of Rebbi Eleazar. Only if he put an idol under it. The opinions of Rebbi Simeon ben Laqish seem inconsistent. There Rebbi Immi said in the name of Rebbi Simeon ben Laqish, if he engraved engravings on it it cannot become invalidated; and we interpreted this to mean, even if he removed the engravings. And here he says so? It is more severe with engravings.
247 It was stated: If he grafted, he has to remove what he grafted. Rebbi Yannai said, only if he grafted for idolatry. Rebbi Hila in the name of Rebbi Eleazar: Only if he put an idol under it.

240, 248 Rebbi Ila in the name of Rebbi Eleazar: Only if he put an idol under it. In the opinion of Rebbi Eleazar there are two Asherot. But have we not stated “there are three kinds of Asherot”? Here temporarily, there permanently.

243 Even though in the second case Mishnah it is sufficient to remove everything grown after the tree was shaped for idolatry, if an engraving was made it is irrevocable even if it was obliterated.

244 If the grafted tree would have been used as Asherah. Babli 48a.

245 The following argument shows that one has to read: R. Simeon ben Laqish.

246 In the second case of the Mishnah he not only rules restrictively that an engraving is irrevocable but also leniently that shaping a tree as Asherah makes it forbidden only if an idol is placed under the tree.

247 Dittography induced by the repetitious quote of the statements of R. Simeon ben Laqish.

248 Babli 48a.

Mishnah 12: What is an Asherot? Any under which is an idol. Rebbi Simeon says, any which is worshipped. It happened in Sidon that they were worshipping one and there was a mound under it. Rebbi Joshua said to them, investigate the mound! They investigated it and found a figure in it. He told them, since they worship the figure we may permit the tree to them

249 Where one has no information to place it in one of the categories of Mishnah 11. Babli 48a.

250 This is a copyist’s error as shown in the Halakhah. One has to read with all other Mishnah source: R. Simeon.

251 The rules of Mishnaiot 13-16 do not apply to this tree.
Halakhah 12: What is an Ashera? Rav Hisda said, They disagree in the indeterminate case. Where do we hold? If it is certain that they worship both idol and tree, everybody agrees that it is forbidden. But if it is certain that they worship the idol and do not worship the tree, everybody agrees that it is permitted. But where do we hold? If it is indeterminate. Rebbi Simeon says, normally they worship both idol and tree; but the rabbis say, normally they worship the idol but do not worship the tree. And it is difficult. Rebbi Simeon disagrees with the Sages and acts in their sense.

252 Since in the interpretation of the Halakhah, R. Simeon should have forbidden both tree and idol. But there is nothing to wonder at since R. Simeon insists that practice follow the majority rule against his own opinion, Sevi’it 9:1, Notes 35-36.

Mishnah 13: One should not sit in its shadow but if one sat he is pure. One should not pass under it and if one passed under it he is impure. If it robbed the public and one passed under it, he is pure. One may sow vegetables under it in the rainy season but not in summer, but lettuce neither in summer nor in the rainy season. Rebbi Yose says not even vegetables in the rainy season since falling leaves drop down on it and become fertilizer.

253 It was noted earlier that idols impart “tent” impurity (Note 184). Therefore if one sits under the crown of an Ashera he is impure by the impurity of the dead. But if he sits in its shadow but not under its crown, he illegally profits from idolatry but is not impure. If he passes under an Ashera he becomes impure like anybody passing under
a tent above a corpse. But walking through
the shadow of an Ashera outside its crown is
not considered profiting from idolatry.
254 It is clear from the earlier sources (Note
184) and the following Halakhah that the
tent impurity generated by an idol is purely
rabbinic. If the crown of the Ashera
extended over a public road, the customary
impurity of idols never was intended to
deprive Jews from using public roads.
255 In winter, the shade given by the tree
inhibits the growth of the vegetables; the
tree is a detriment, not a positive influence.
But in summer the shade is necessary; it
clearly is usufruct.

Halakhah 13: “One should not sit in its shadow,” etc. There\textsuperscript{256} they say
in the name of Rav Hisda: Its shadow is forbidden, its half-shadow is
permitted. What is its shadow and what is its half-shadow? There they say,
any place where if it would fall down would touch him is its shadow, but any
place where if it would fall down would not touch him is its half-shadow\textsuperscript{257}.

256 In Babylonia.
257 It is clear that at any place not under the
tree’s crown there is no question of
impurity. The discussion is only about the
statement that one should not sit in the
Ashera’s shadow. It is now added that in
the half-shadow one may sit, i. e., far
enough away that if the tree fell down in the
direction of the person sitting there the
fallen crown would not reach the person.

In the Babli, 48b, this is attributed to R.
Johanan the Galilean.

Why is its shadow forbidden? Because it is an enjoyment. But a grave is
forbidden for usufruct and its shadow is permitted! But the Temple Hall is
forbidden for usufruct and Rabban Johanan ben Zakkai was sitting and
teaching in the shadow of the Temple Hall\textsuperscript{258}. Therefore the reason cannot be
that it is forbidden for usufruct. Rav Abin in the name of the rabbis there\textsuperscript{256}:
This implies that this impurity of the dead is not logically consistent\textsuperscript{259}. For
otherwise if a grave were robbing the public and one passed under it one would be pure.

258 Babli Pesahim 26a. There it is argued that he could do this only because the Temple was built for its service and the Herodian Hall was 100 cubits high so that its shadow at times extended beyond the Temple Hill; it never was intended that the shadow should prevent people from being there. This disagrees with the statements here.

259 Since as pointed out in the next sentence, a mausoleum whose roof extends over a public road will automatically impart impurity to any Jew walking under it (and force any Cohen to make a detour to avoid passing under that roof) the rules of the Ashera cannot be deduced from the rules of the impurity of the dead. They are customary rules and as such not susceptible to logical analysis.

Gamliel the Twin was supporting260 Rebbi Simeon ben Laqish. They came to this statue. He asked him, may we pass in front of it? He said, pass by it and blind its eye261. Rebbi Isaac bar Mattanah was supporting Rebbi Johanan. They came to the statue of the city council262. He asked him, may we pass in front of it? He said, pass by it and blind its eye. Rebbi Jacob bar Idi was supporting Rebbi Joshua ben Levi. They came to the statue of Herod263. He told him, Nahum the most holy man17 passed by it and you do not want to pass by? Pass by it and blind its eye!

260 In this paragraph, the second person mentioned always is the authority who in walking leans upon one of his students. A comparison with other occurrences shows that בְּכָלָה means “was supporting” but מָשַׁתַּם is “leaning on.”

261 One “blinds the eye” of the idol by passing by it without taking any notice of it and the idol sees that it is not taken seriously.

262 Greek θυσίας. In Tiberias this probably was a statue of divus Tiberius.

263 In Mo’ed qatan 3:7 the spelling is as here. In Berakhot 2:1 (Note 57) אֲרַיָה, in Seqalim 2:6 אִירָיָה, in Midrash Shemuel 19[4], ed. Buber Note 17, Ezra, in Yalqut Samuel # 124 אִירָיָה. The last two readings “Herod” seem to be the correct one.
Does this not disagree with Rebbi Johanan, since Rebbi Johanan said, an idol which was broken is forbidden? And so we are thinking to say if in the future he cannot restore it whole it is permitted according to everybody. Explain it about a Jew’s idol. Does this not disagree with Rav, since Rav said, for its purpose it is forbidden but its shavings are permitted? Again explain it about a Jew’s idol.

Why does everybody stay away from it? Because its dropping leaves are bad.

264 The last sentence of the Mishnah, where R. Yose forbids planting anything. Why should the status of wilted leaves be different from broken pieces? It is not so much the statement of R. Johanan but the following statement that anything which cannot be repaired is permitted. Wilted leaves certainly cannot be restored.

265 Which is permanently forbidden.

266 In the Babli, 49b, this is a baraita: “A Gentile who worked on an idol with a plane, if it was for his benefit it and its shavings are permitted, for its benefit it is forbidden but the shavings are permitted. A Jew who worked on an idol with a plane, whether it was for his or its benefit, both it and its shavings are forbidden.” Cf. Mishnah and Halakhah 16.

267 Why does nobody ever take advantage of the permission given in the Mishnah to plant vegetables under an Ashera in the winter?

Mishnah 14: If he took wood from it, it is forbidden for usufruct. If he used it to heat an oven, if it was new it must be destroyed, if it was old it must be cooled down. If he used it to bake bread, it is forbidden for usufruct. If it was mixed with other loaves, all are forbidden for usufruct.
Eliezer says, he should bring his profit to the Dead Sea\(^{272}\). They said to him, idols cannot be redeemed.

268 From an Ashera tree.
269 A portable earthenware cone.
270 These ovens were not finished in a kiln, they became hardened by being exposed to the fire kindled in them. Therefore a new oven would be finished by the Ashera wood; it must be destroyed.
271 Since loaves are sold by the piece, no loaf can be considered insignificant if mixed with others. Even without the special case of loaves of bread, “the ashes of everything burned are permitted except ashes coming from idolatry” (\textit{Orlah} 3:3, Note 116).
272 Where the coins are corroded and destroyed. Obviously R. Eliezer must mean not only the profit but the entire value of the forbidden loaf.

\(\text{Halakha 14:} \) “If he took wood from it,” etc. Rav Hasdai said, they are disagreeing in the indeterminate case. Where do we hold? If to heat, everybody agrees that it is permitted. If to fumigate, everybody agrees that it is forbidden. Where do we hold? In the indeterminate case\(^{273}\).

273 The Mishnah before R. Hasdai was not the text before us. He must have read: “If they (the pieces of wood) were mixed with others, . . . “ Then R. Eliezer and the rabbis disagree about the value created by the wood coming from an Ashera. In this case the argument of Note 271 does not apply. Since idols are destroyed by burning (Note 106) it is obvious that their wood may be burned. If it is used to cook or bake anything, the profit comes only after the wood has been reduced to ashes and is no longer forbidden. But in fumigating the burning itself is the valuable act and is forbidden. R. Eliezer permits to bring the profit to the Dead Sea as long as it is not clear that the action was forbidden. The rabbis forbid everything as long as it is not clear that the action is permitted.
Mishnah 15: If he took from it [wood to make] a weaver’s shuttle, it is forbidden for usufruct. If he used it to weave cloth the cloth is forbidden for usufruct. If it was mixed up with others, all are forbidden for usufruct. Rebbi Eliezer says, he should bring his profit to the Dead Sea. They said to him, idols cannot be redeemed.

274 Reading with the Halakhah (and Greek κερκίς, -ίδος.
Maimonides’s autograph Mishnah) דברך, 275 Same argument as in Note 271.

глядת מש. נשל מחמקת קרך כל. אם קרך מפי. כז תקפת מפי אלוף אשקחת.

43c line 8
רפי תקבר בר אשה קחקש. נטיל המחמקת קרך אסר בתניה. יאיר בר אשת חמד קבר אסר.

במקרא. יקר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קרקר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר קר kr
Mishnah 16: How does one make it insignificant? If he pruned dry branches, green branches, took from it a rod, or a twig, even a leaf, it became insignificant. If he planned it for its benefit it is forbidden, not for its benefit it is permitted.

279 Taking anything from a holy tree in a manner which a pagan never would do turns

Halakhah 16: “How does one make it insignificant,” etc.

Rav said, for his benefit, both it and its shavings are permitted; for its benefit it is forbidden but its shavings are permitted.

Samuel said, for its benefit both it and its shavings are forbidden, for his benefit it is forbidden but its shavings are permitted.

Rebbi Johanan said, for its benefit it is forbidden but its shavings are permitted.

280 Cf. Note 266. In the Babli, 49b, the opinions given here as those of Rav and Samuel are reported as those of students of Rav.
Mishnah 1: Rebbi Ismael said, three stones next to one another and next to a Mercury¹ are forbidden, but two are permitted². But the Sages say, what is seen with it is forbidden³, what is not seen with it is permitted.

1 A Hermes stele, where every passer-by is supposed to add a stone to the heap covering it. Cf. Sanhedrin 5:2 Note 36, Mishnah 7:12. The stele is a phallic symbol (Herodotus II 54).

2 If the stones are separated from the heap they do not belong to it. One starts a new heap with a triangle of stones, not with two stones.

3 Since the additional stones are thrown, even if they are found separately from the mound but near to it one may assume that they were thrown as homage to Mercury.

Halakhah 1: “Rebbi Ismael said,” etc. Rebbi Immi said, the reason of Rebbi Ismael is because of a small Mercurius next to a large Mercurius. But the rabbis say, because of the feet of Mercurius. How large are the feet of Mercurius? 50 cubits⁴.

4 Within 50 cubits of the center of the heap the stones “are seen with it.” Babli 50a.
The practice of Mercurius is the following: Two stones one touching the other and the third on top of them. If one put down the second one and they warned him because of “it and its young”, he is whipped. Because of idolatry he is stoned. If he put down the third, there is a disagreement between Rebbi Johanan and Rebbi Simeon ben Laqish. For they disagreed: If somebody slaughters an animal and its young for idolatrous purposes. Rebbi Johanan says, if he was cautioned about an animal and its young he is flogged, about idolatry he is stoned. Rebbi Simeon ben Laqish said, even if he is cautioned about an animal and its young he is not flogged since he would be stoned to death had he be cautioned about idolatry.

5 This does not mean that the third stone lies vertically on top of the other two since this is a very unstable arrangement. It must be that the third stone forms a triangle together with the others; then the third stone is on the altitude of the triangle which is at a right angle to, i.e. “on”, the base line.

6 Lev. 22:28. The text is very elliptic here; it is explained by the following quote from Terumot.

A person is starting to build a rudimentary Mercurius. When he had put down the second stone he decided to sacrifice to the yet unfinished idol and he chose for this purpose an animal and its young. As explained in Sanhedrin, a criminal conviction in rabbinic theory is possible only if criminal intent was proven by the testimony of two eye witnesses that the perpetrator had duly been warned of the criminal nature of his intended act. Also, for one act there can be only one punishment. Slaughtering an animal and its young on the same day is a simple criminal infraction for which no punishment is spelled out in the biblical text. The prescribed punishment for such an act is flogging.

7 One has to read “is not stoned”. Since two stones do not make an idol, even if there was criminal intent no crime was committed.

8 Then there is an idol and even though it is worshipped by throwing an additional stone, anything which would be part of the service in the Temple when done for an idol is a capital crime whether or not the idol is worshipped in this way.

9 This text to the end of the paragraph is from Terumot 7:1 Notes 64-66; Ketubot 3:1 (27c l.21).
What is a Mercurius? Any which borders the ocean or roads. The practice of Mercurius is by throwing. What if he bowed down before it? Rebbi Yose said, essentially is is called Mercurius only for bowing down, a maskit stone you shall not put up in your land to bow down on it. I could think that one may not put two stones next to one another and put his box on the stones of the Temple, but you put your box down on it; you do not bow down on it but you bow down on them, the verse says to bow down on it, you do not bow down on it but you bow down on the stones of the Temple.

10 Indicating a landing spot on the shore or a road crossing on land.
11 Lev. 26:1. The connection to be made between רɾכניילם משליכו and is not clear.
12 Babli Megillah 22b; Sifra Behar Pereq 9(5).

Rav commanded to the family of Rav Aha, Rebbi Immi commanded to his own family, if you go out on the fast day you should not incline normally. Rebbi Jonah inclined on his side; Rebbi Aha inclined on his side. Rebbi Samuel said, I saw Rebbi Abbahu inclining normally. Rebbi Yose said, I pointed out a difficulty before Rebbi Abbahu, is it not written, a maskit stone you shall not put up in your land to bow down on it. Explain it if he fixed a place for it. But is it not written, it was when David arrived at the mountain...
top where one bows down before God? Except bowing down which is not on the ground. Does there exist bowing down which is not on the ground? They fell down with their faces to the ground and bowed down. Rebbi Abbahu added up to give thanks to the Eternal for He is good; Rebbi Mana added up to for eternal is His kindness to Israel. Rebbi Johanan said to Rebbi Hiyya bar Abba: Babylonian, two things came from you, the stretching out on the Fast Day, and the willow of the Seventh Day. The rabbis of Caesarea say, also this blood letting. It follows what Rebbi Immi said, the Babylonians in the name of the rabbis there: They permitted prostrating only on a public fast, and only on the side. The younger Rebbi Yannai in the name of his fathers: Anybody who is not qualified like Joshua that if he falls on his face the Holy One, praise to Him, would tell him, get up, should not fall down, in the case of an individual [praying] for the community.

13 Usually, “fast day” is one of the days of penitence called in case of a drought, as described in Tractate Ta’anit. However, since the Babli states (Ta’anit 11b) in the name of Rav’s colleague R. Jeremiah bar Abba that this kind of fast day is not practiced in Babylonia, Rav’s instructions to the family of Rav Aha can only refer to the Fast Day, the Day of Atonement, where it is customary to prostrate oneself during the recitation of Rav’s composition Alenu at the mention that “we prostrate ourselves” and during the enactment of the Temple ceremony of the day. Cf. Note 18.

14 Face down on the floor. The examples following refer to the daily prayers which morning and afternoon have three parts. The first, the “eighteen benedictions” are said standing, the second, “falling down on one’s face”, is said while bending down, and the third, a recitation of biblical verses, is said sitting up straight. Following the majority opinion here and the unquestioned prescription of the Babli (Megillah 22b) one may not put down one’s face to the ground but must bend it sideways. This presumes that the synagogue had a stone floor (as shown by the archeological evidence in Galilee.) There would be no need to turn one’s head on a dirt floor or on carpets.

15 2S. 15:32. A “high place” on the Mount of Olives which however had not to be destroyed since there was neither altar nor stone floor.

16 2Chr. 7:3.

17 The additions of RR. Abahu and Mana are in the verse, except for the addition “on Israel” which are not in this verse nor in any other biblical occurrence of the formula give thanks to the Eternal for He is good, for eternal is His kindness.

18 Prostrating oneself with outstretched arms and legs. Since the only day one did this in Babylonia was the day of Atonement, it must refer to that day.

19 Hitting the floor with a bunch of willow
twigs on the Seventh Day of the Festival of Tabernacles; an ancient custom to induce ample rains in the coming winter.
20 Traditions of good and bad days for blood letting.
21 To avoid violating Lev. 26:1. These now are Babylonian instructions for the Palestinian fast days for rain which were not practiced in Babylonia.
22 Jos. 7:10.
23 An individual praying in public for the relief of a public calamity may not prostrate himself unless he claims for himself a status at least equal to Joshua’s. A private person praying for private needs may prostrate himself as much and as long as he feels necessary. Babli Megillah 22b in the name of R. Eleazar.

But the Sages say, what is seen with it is forbidden, what is not seen with it is permitted.” (What is seen with it, its body, is forbidden; what is not seen with it is permitted.)

What is seen with it is its body, what is not seen with it is not its body. Does this not disagree with Rebbi Simeon ben Laqish since Rebbi Simeon ben Laqish said, an idol which was broken is permitted? And so we are thinking to say if in the future he can restore it whole it is permitted.)
permitted according to everybody. Does this not disagree with Rebbi Johanan, as Rebbi Johanan said, an idol which was broken is forbidden? And so we are thinking to say if in the future he cannot restore it whole it is permitted according to everybody. But Rebbi Yudan the father of Rebbi Mattaniah said, if they were lying on their spot it is as if he would return it to its wholeness. And these are at their place.

Rebbi Abba in the name of Rav: Sometimes you are saying, broken pieces of idols cannot be nullified. And sometimes you are saying, serving pieces of idols cannot be nullified. He who says serving pieces, certainly idols. But he who says idols, therefore not serving pieces. Rebbi Samuel, Rebbi Abbahu in the name of Rav: Mercurius stones which were scattered never can be nullified, because of worship of idols. Rebbi Johanan heard it and said, our teacher taught us well, since if one bows down before an idol of (mourners) they never can be nullified.

How does one nullify it? Rebbi Hyya bar Ada said, by spit. But did not Rebbi Hyya state: Scattered stones of Mercurius have no nullification? Rebbi Phineas said, here those which where thrown at it; there those which were not thrown at it. As this: Rebbi Simeon ben Rebbi had a Mercurius on his field. He came to his burgonar and told him, since I heard that the magistrate wants to pass by here tomorrow, by your life lift these stones. After he had lifted them, he wanted to take them away. He told him, they are mine. Rebbi Hyya bar Abba heard this and said, did not the Elder Rebbi Hyya state this? But since he had heard it from him, he reinforced and fixed it.

24 The first time (in parentheses) the scribe mixed the Mishnah text with the intended explanation. The second time then he wrote correctly.
25 A quote from Chapter 3, Notes 215 ff.
26 It is clear that one has to read with the text in 3:2 “forbidden”. The argument goes as follows: Since the stones lying around a Mercurius are just pebbles, should they not be considered shards? The answer is that the pebbles can easily be put back on the mound; therefore they are forbidden.
27 Chapter 3, Note 71.
28 Therefore they are forbidden according to everybody.
29 Both versions are reported as to be stated by Rav.
30 Since the worship of Mercurius is by throwing a stone on the heap, all stones (except the core which formed it in the first
place) are offerings to the idol which are permanently and irrevocably forbidden.

31 A scribal error. Instead of שלמות read שלכלים “of food”.

32 By having a Gentile spit on some of the core stones.

33 As noted before, the original mound can be disassembled and its stones used; the accretions by passers-by cannot.

34 Probably a dweller or supervisor of a burcus, πυργός “tower”; cf. Chapter 1, Note 229. The conjecture of M. Sokoloff, “tenant farmer” based on an interpretation of D. Sperber (Essays on Greek and Latin in the Mishnah, Talmud and Midrashic Literature, Jerusalem 1982) of πυργός as “farm house” is not convincing. Also compare Greek πυρκαεώς “fire-kindler” (E. G.).

35 Greek ἀρχαον.

36 The burgonar.

37 R. Simeon ben Rebbi.

39 R. H.D. Azulay reports (כר לארד) a ms. reading רח “he repeated”.

40 He publicized what he had done in order to fix practice following R. Hiyya in the interpretation of R. Phineas.

Mishnah 2: If one found on top of it coins, garments, or vessels, they are permitted. Branches of vine, wreaths of ears of grain, wines, oils, and fine flours, and anything similar to what is offered on the altar is forbidden.

41 Of a Mercurius mound.

42 Since only stones are offerings to the Mercurius. There is a dissenting opinion in Tosephta 6:13 which forbids coins found on the top stone.

43 Greek φραγέλλιον “twig”.

44 Anything of a kind acceptable for the altar in the Temple is forbidden if offered to any pagan deity even if the latter is not usually worshipped in this way. Cf. Sanhedrin 7:11, Note 239.

Halakhah 2: “If one found coins on top of it,” etc. Rebbi Jonathan said, not only wreaths of ears of grain but even wreaths of roses. Rebbi Yose said, not only a Mercurius and on top of it coins but even any pagan place...
which has no lattice work\textsuperscript{46} and he found in it garments or vessels, they are permitted.

45 Which are forbidden as ornaments and also because they are used in Isis worship.

46 Which separates the area reserved for priests from that of common worshippers, where everything is forbidden as appurtenances of idols (Chapter 2 Note 219, Chapter 3 Note 132). If no such separation exists, nothing is reserved for the idol except what is on it. The Babli has the opposite rule, 51b.

\textbf{Mishnah 3:} If an idol had a garden or a bath house, one may benefit from them not with a favor\textsuperscript{47} but one may not benefit with a favor. If it belongs to it and a third party one benefits whether with or without a favor\textsuperscript{48}.

47 One does “a favor” either by paying or by incurring a debt of gratitude, i.e., the other party accumulates goodwill which obliges one to reciprocate on occasion.

48 Since one may credit the third party with either income or goodwill. As implied by the Halakhah, direct payments to a pagan temple are always excluded.

\textbf{Halakhah 3:} “If an idol had a garden,” etc. So is the Mishnah: A favor to the priests or without a favor to the priests\textsuperscript{49}. 50c It is forbidden to sell\textsuperscript{51} fifes of idols, but if one pays the rental fee to the state if it is used to supply the needs of idol worship it is permitted to sell\textsuperscript{51} them\textsuperscript{52}. It is forbidden to rent a store from a pagan temple, but if one pays rent to the state even if it is used to supply the needs of idol worship it is permitted to rent it. It is forbidden to
give to collectors for idol worship. If he pays a fee to the state even though he collects for idol worship it is permitted to give to him.” And the Mishnah said so, “if it belongs to it and a third party one benefits whether with or without a favor.”

50 Tosephta 6:1.

51 In the Tosephta: “to use for dirges.” Since a rental fee is mentioned, “rent” is the reading which is required here also.

52 As stated at the end of the Halakhah, since the state will take its cut and not spend all the money for idolatry, one may suggest that the Jew’s money is income for the state. This is valid for all cases in the Tosephta.

Mishnah 4: A Gentile’s idol is immediately forbidden but a Jew’s only when it is worshipped. A Gentile is able to annul his idol and that of a Jew; but a Jew cannot annul the idol of a Gentile. If one annulled an idol he annulled its appurtenances; if he annulled its appurtenances the appurtenances are annulled but it is forbidden.

53 Immediately when it was made since its manufacture is part of its worship.

54 Since he is not supposed to do it there is a chance that he will not worship it.

55 “To annul” an idol is to treat it in a way inconsistent with veneration, such as breaking off a piece. If the Gentile does this he transforms the idol into a piece of art which is permitted for usufruct. A Jew can do this to his own idol as part of his repentance but since he is under the obligation to destroy pagan idols without obtaining any gain he cannot transform Gentile objects forbidden for usufruct into those permitted for usufruct.
Halakhah 4: “A Gentile’s idol is immediately forbidden,” etc. Rebbi Simeon ben Laqish said, the Mishnah speaks about an artist who works to sell it on the market. When he finishes it, it is a sure thing that he bows down before it. Rebbi Yose asked, if it is a sure thing that he bows down before it, why did we state “a Gentile’s idol is immediately forbidden but a Jew’s only when it is worshipped”?

Rebbi Hila in the name of Rebbi Simeon ben Laqish: If one cuts an idol in stone, even though you say that nothing connected to the ground is forbidden, one warns him on every single chiseling and when it will be separated from the rock he will be flogged. Rebbi Yose said, from this you understand that if somebody makes a statue for idol worship, even though you say that nothing breathing can be forbidden, one warns him about each single mallet and he will be flogged when it is finished.

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56 If he works for the trade and an idol is worth more if it was worshipped then there is no reason to exempt a Jewish-made idol from immediate prohibition.

57 While in modern Hebrew מוכס הוא is a sledge hammer, and some dictionaries define it as a mallet, neither etymology nor meaning are clear. (In Arabic فرناس or “the back of an axe, mountain ridge”.) The sentence is not intelligible, but the Babli (19b) seems to disagree since it notes that an incomplete idol will not be worshipped and therefore has no commercial value in the idol trade; therefore it is the last application of the hammer or chisel which confers the status of idol.
"A Gentile’s idol is immediately forbidden," therefore it can be annulled. "But a Jew’s only when it is worshipped," therefore it cannot be annulled. Rebbi Ze’ira said, there is no “therefore”, only “it cannot be annulled or it can be annulled”. “A Gentile’s idol is immediately forbidden,” as it is written: you certainly shall destroy. “But a Jew’s only when it is worshipped,” as it is written, cursed be the man who makes a hewn or molten image, etc., when he puts it up. But some are switching this. “A Jew’s idol is immediately forbidden,” for it is written, cursed be the man. “But a Gentile’s only when it was worshipped,” as it is written, you certainly shall destroy all the places where these peoples worshipped. Rebbi Isaac bar Nahman in the name of Samuel understood it from the following: If you inherited it when it was a god you shall burn it in fire, otherwise of which you will inherit their gods. Rebbi Johanan in the name of Rebbi Yannai understood it from the following: You should not covet silver or gold for them. You cannot covet and take, but others can covet and you are taking.

Rebbi Johanan said to Bar Drosai, go down and break all those statues in the public baths. He went down and broke them all except one. Why this? Rebbi Yose ben Rebbi Abun said, because another Jew was suspected of burning incense for it.

58 It is not a logical consequence. The Tosephta, 5:3, notes that it is a logical consequence of the opposite opinion. If the idol made by a Jew is immediately forbidden even if he did not worship it then it follows that he cannot annul it (except maybe by melting it down) but the Gentile whose idol becomes forbidden only if worshipped can annul an idol by an act of non-worship.


60 Deut. 27:15. The argument is from the later part of the verse, cursed be the man who would make a hewn or molten image and put it up in secret. As long as it is not put up there is no curse. The Babli, 52a, reads the verse as stating that the curse applies when the idol is made.

61 Tosephta 5:4.

62 This probably should be a quote of...
Deut. 7:25.
63 The full verse reads: you certainly shall destroy all the places where these peoples worshipped, whom you are going to inherit, their gods. By taking only a fraction of the verse it is turned into permission to inherit the statues of the gods. This implies that if the Gentiles do not consider them as gods any more, the prohibition of usufruct is lifted.
64 Deut. 8:25. If the Gentiles covet their silver and gold, you may take it. In the Babli, 52a, is a similar argument. Samuel reads the verse, do not covet silver or gold for them and take for yourself as: you may not covet silver or gold for them but you may be permitted to take for yourself.
65 Greek δημόσιον (βαλανείον) public (government run) bath.
67 One might read רועי “one” instead of רועי “another.”

Rebbi Hyya bar Ashi in the name of Rav: 68 Rebbi was sitting and teaching his son 69 Rebbi Simeon. The Gentile annuls his own idol and that of his neighbor. He said to him, when you still were in full mental powers you quoted Tanna'im stating that a Gentile annuls his own idol and that of a Jew. He answered him, no, my son. An idol which a Jew had worshipped can never be annulled. And it was stated so: “Rebbi Simeon ben Menassia says, an idol which a Jew had worshipped can never be annulled.” 70 Rav stated in the name of 71 the reason of this Tanna: Cursed be the man who makes a hewn or molten image, forever 60.

68 Babli 52b, where, however, it is accepted that Rebbi in his advanced age changed his opinion.
69 Reading רַבִּי "his son" instead of inappropriate ᵴⁿᵉʳ הָעֵם "height, altar" or ᵹᵉⁿᵉʳ הָעֵם “why?”.
70 Babli 53a; as anonymous text Tosephta 5:3.
71 A name is missing here.
Bar Qappara found a ring with an idol. An Aramean youth was running after him. He was hitting him, cursing him, and told him, spit on it! He did not accept. Urinate on it! He did not accept. This implies that a Non-Jew annuls his own and another person’s idols under duress, on condition that he know the nature of this idol. An idol which had been worshipped by a Jew can never be annulled. Could it not be like an idol which was abandoned by its worshippers and by that being annulled? Rebbi Ze’ira said, anything which becomes annulled by itself, a Jew can annul. But anything which does not become annulled by itself, a Jew cannot annul.

72 Another version of the same story is in the Babli, 43a, leading to essentially the same conclusions.
73 Bar Qappara the Gentile youth.
74 This sentence does not seem to fit into the context here. It is not totally excluded that the translation should be: An idol which had been worshipped, a Jew can never annul.
75 Mishnah 6.
76 If the ring had been abandoned, by this fact it would become permitted for usufruct. Then the Jew could eliminate the idolatry aspect either by defacing it or by melting it down. But if the ring was lost and the owner did not realize his loss, he could not abandon it and it remains forbidden for all usufruct unless a Gentile treat it with contempt.
Rav said, a pedestal\textsuperscript{77} is not annulled\textsuperscript{78}. Therefore if one annulled it it is annulled\textsuperscript{79}. The opinions of Rav seem inconsistent. There he says\textsuperscript{80}, if one casts a cup for idolatry it is immediately forbidden, and here he says so? Here if he burned incense, there if he did not burn incense\textsuperscript{81}. And even if you are saying, in both cases if he burned incense, Rav follows his opinion since Rav said, if one casts a cup for idolatry it is immediately forbidden\textsuperscript{82}.

Rav said, a pedestal is not annulled. Therefore its appurtenances are annulled. The opinions of Rav seem inconsistent. There\textsuperscript{83} Rav Sheshet said in the name of Rav, if the procession was using another way, and here he says so? There if he burned incense, here if he did not burn incense. And even if you are saying, in both cases if he burned incense, Rav follows his opinion since Rav said, if one casts a cup for idolatry it is immediately forbidden\textsuperscript{82}.

\textsuperscript{77} Cf. Chapter 3:10, Note 231.
\textsuperscript{78} If the pedestal was made especially for an idol, removing the idol does not automatically make the pedestal permitted for usufruct. This implies that the pedestal is treated not as an appurtenance of the idol but as a separate idol.
\textsuperscript{79} In the Babli, 53b, this is the opinion of the Galilean authorities R. Johanan and R. Simeon ben Laqish, opposed by Rav and Samuel.
\textsuperscript{80} Halakhah 3:10. Since Rav deduces from the statement of the Mishnah about stones used for a pedestal rules about appurtenances of idols it follows that he treats the pedestal as an appurtenance.
\textsuperscript{81} A pedestal which was not used as an altar is an appurtenance; if it was used as an altar it is an idol.
\textsuperscript{82} Obviously this quote cannot be correct since it was the basis of the question raised; one must refer here to the statement of R. Abba in the name of Rav in Halakhah 3:10: “This implies that what is cast for idolatry is immediately forbidden.” The difference is whether the stone was quarried or the tree felled for the purpose of building a pedestal for idolatry or whether the material was bought on the market.
\textsuperscript{83} This refers to Mishnah 6, pedestal erected by the Augustales, the priests of the worship of the Emperor, for a visit of the Emperor in the region. If the Emperor did not pass by a certain pedestal it is permitted without being disassembled. The statement of Rav Sheshet is not otherwise recorded. Babli 53b.
Rebbi Johanan said, a stele is a monolith, an altar has many stones. Hizqiah said, a stele is annulled once it is damaged; of an altar one has to damage each single stone. A *baraita* of Hizqiah disagrees with him: If you tore down the altar, leave it alone; if you broke the stele, leave it alone.

Rebbi Ze’ira, Rebbi Isaac bar Nahman in the name of Rebbi Hoshia; Rebbi Hiyya (Rebbi) Abba, Rebbi Eleazar in the name of Rav Hoshia: *When He turns all stones of the altar like smashed pieces of chalk*, persecute them until you eliminated its egg from the world. But here, if you broke a stele, leave it alone; if you tore down an altar, leave it alone.

84 Babli 53b. In the Babli, instead of *masseba* one uses בֶּֽמֶּֽשֶּֽבָּֽא, not consistent with the use of the term in the *Yerushalmi*. This change in terminology is not usually recognized in the talmudic Dictionaries.

85 The terminology is taken from Deut. 12:3.

86 Read ר. The tradent is R. Hiyya bar Abba.

87 Is. 27:9. In the Babli, 54a, this is Hizqiah’s *baraita*; probably here also this is the statement which contradicts his earlier statement that simple damage, not complete annihilation, permits *massebot* and altars for usufruct.

88 Divine vengeance is different from rules prescribed for humans.

It is written, *do not make idols for yourselves, statue and stele you shall not erect for yourselves*. Is not making the same as erecting? Rebbi Hila said, making is from new; erecting, if it falls down one shall not re-erect it.

It is written, *you shall tear down their altars and break their steles*. From where to apply one to the other? Rebbi Abun bar Hiyya said, it was said to refer to both sides; either breaking, or cutting down, or tearing down for each of them.
Lev. 26:1. statues you shall cut down.

Deut. 12:3. The verse continues, their

Mishnah 5: How does one annul it? If he cut off the top of its earlobe, the tip of its nose, the tip of its finger. If he disfigured it even though nothing is missing, he annulled it. If he spat in its face, urinated before it, dragged it, threw excrement on it, this is not annulled. If he sold or mortgaged it, Rebbi says it is annulled, but the Sages say it is not annulled.

91 An idol or one of its appurtenances. hammer so that nothing is missing.
92 E. g., by denting the statue with a hammer so that nothing is missing.
93 Only permanent damage is acceptable.

Halakhah 5: “How does one annul it,” etc? Rebbi Ze’ira said, this is if he sold it in peace. But if he sold it in ill-will, everybody agrees that it is annulled; it happens that he is hungry, falls into a rage, and curses his king etc.

Ze’ur bar Hinena in the name of Rebbi Hanina: They disagreed in case he sold it to a goldsmith. But if he sold it to its worshipper, everybody agrees that it is not annulled. Rav Jeremiah in the name of Rav: they disagreed if he sold it to its worshippers. But if he sold it to a goldsmith everybody agrees that it is annulled. Rebbi Jacob bar Aha in the name of Rebbi Johanan: the opinion of everybody. Rebbi Hila in the name of Rebbi Simeon ben Laqish:
in dispute. It turns out that Rebbi Hanina held with Rebbi Johanan and Rav Jeremiah with Rebbi Simeon ben Laqish. What about it? They disagreed in case he sold it to a goldsmith. But if he sold it to one of its worshippers, everybody agrees that it is not annulled.

93 This refers to the last sentence in the Mishnah, the disagreement between Rebbi and the Sages. If the seller does not express a grudge towards the idol.

94 Is. 8:21. The Babli uses the same verse as a reason for which a contemptuous treatment of an idol is not an annulment; 53a.

95 The disagreement between R. Johanan and Rav is formulated in the Babli (53a) about whether the idol is sold to a Jewish or a Gentile goldsmith, without exact attribution of authorship.

96 It is not spelled out what they are referring to. The next sentence makes this clear.

97 The decision follows R. Johanan and the goldsmith must be a Jew who will melt down the idol.

Mishnah 6: An idol which was abandoned by its worshippers in times of peace is permitted, in times of war is forbidden. Pedestals of kings are permitted since they put them up when the kings pass by.

97 Since there is no indication that the idol was permanently abandoned. the Emperor has departed, the pedestal has lost its mission; cf. Note 83.

98 This is a temporary situation; as soon as the Emperor has departed, the pedestal has lost its mission; cf. Note 83.

Halakhah 6: “An idol which was abandoned by its worshippers,” etc. It was stated: The war of Joshua is forbidden, similar to the war of Joshua is permitted. The war of David is permitted, like the war of David is forbidden.
The war of Joshua is forbidden, as it is written\(^99\), *for certainly you should ban them*. Similar to the war of Joshua is permitted, for it is a short time\(^100\). The war of David is permitted, what Itai from Gat annulled\(^101\). Like the war of David is forbidden, for it is permanent\(^102\).

\(^{99}\) Deut. 20:17. This verse is quoted as justification of the first statement, that idols captured in the wars of Joshua were forbidden.

\(^{100}\) Idols conquered in a war of limited duration are temporarily forbidden until it is ascertained after the war that no worshippers returned, as in the war of Joshua where in theory all Canaanites were killed (Deut. 20:16).

\(^{101}\) Since David had Gentile mercenaries in his army, they immediately could annul all idols and articles of pagan worship which then became of use (Chapter 3:3 Note 108).

\(^{102}\) If a war is not ended with a peace but with an indefinite truce, the preceding arguments are not applicable.

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**Mishnah 7:** The Elders were asked in Rome, if He does not approve of idol worship, why does He not eliminate it? They answered, if they would worship something which the world does not need, He would eliminate it. But they worship sun and moon, stars and planets, mountains and hills. Should He destroy His world because of the stupid? They told them, if it is so, He should eliminate things which are not needed in the world, and keep things necessary for the world. They answered, then we would strengthen the worshippers of the latter who would say, you should know that these are divinities since those were eliminated and these were not eliminated.
Halakhah 7: “The Elders were asked in Rome,” etc. If somebody stole seeds and sowed, would it not grow in the end? If somebody sleeps with a married woman, would he not in the end cause a bastard to be born? But let the world continue its usual way. The stupid who misbehave will in the future have to account for their deeds.

Rebbi Ze’ira said, if it were written, “like them should be their worshippers”, that would be difficult; the sun’s worshippers like the sun, the moon’s worshippers like the moon. But, like them should be their makers. Rebbi Mana said, if it were written, “like them should be their worshippers”, it would not be difficult, as it is written, the moon will be ashamed and the sun abashed. Rebbi Nahman in the name of Rebbi Mana: In the future, an idol will come, spit in the face of its worshippers, make them ashamed, and disappear from the world. What is the reason? All worshippers of statues will be ashamed. Rebbi Nahman in the name of Rebbi Mana: In the future, an idol will come, bow down before the Holy One, praise to Him, and disappear from the world. What is the reason? Bow down before Him, all gods.

103 To compare people to sun and moon would be praise.
104 Ps. 115:8. This clearly refers to idols and their makers.
105 Is. 24:23.
106 Ps. 97:7. This homily ends the part of the Tractate devoted to idols.
Mishnah 8: One may buy a used wine-press from a Non-Jew\(^\text{107}\). Even if he\(^\text{108}\) takes it in his hands and puts it on the pile\(^\text{109}\). It does not become libation wine until it flows down into the cistern. If it flowed into the cistern\(^\text{110}\), what is in the cistern is forbidden and the remainder is permitted.

Here it denotes the heap of grapes to be pressed.

110 The place where the juice flowing from the wine press is collected. As Rashi points out, European wine presses are not built over cisterns; there the place of the cistern is taken by the barrel into which the juice is collected.

If the Gentile touches the fluid in the cistern, the contents of the cistern become forbidden, the fluid still in the press is permitted. The status of the fluid in the pipe leading from press to cistern has to be discussed in the Halakhah.

Halakhah 8: “One may buy a used wine-press,” etc. Rebbi Hanan stated: Only if the Jew did not turn his eyes away from him\(^\text{111}\). But if he turned his eyes away from him, not then. So far if he\(^\text{112}\) was taking juice and grapes together to put on the heap. If he gave these and those separately, (even from what was left in the fissures, what is under the bunches is forbidden, on the sides is permitted.)\(^\text{113}\) Rebbi Yose ben Rebbi Abun in the name of Rebbi Johanan: Itself it becomes libation wine\(^\text{114}\).

111 The Gentile can help in preparing the harvest for pressing only if at all times a Jew sees him so one is sure that he does not touch the cistern or any storage barrels of
grape juice. Quoted in Tosaphot 55b, Roqeah #495, Raviah # 1096, Mordekhai #845, Rosh (Note 113).

112 The Gentile.

113 The reading of Rosh (Avodah zarah 4, #50) in the version of R. Lipman Heller Wallerstein and R. H. Azulai seems preferable:

“If he gave these and those separately, even so it is permitted. The fissures under the bunches are permitted, on the sides they are forbidden.”

If the grapes are harvested into a vat, if the entire vat is emptied into the wine press one does not care if juice already oozed from the grapes since this is part of the pressing process. If the grapes are taken out of the vat and then the fluid is poured into the press separately, this also is acceptable. But if then some fluid is left in the fissures between the wooden planks which form the walls of the vat, it is grape juice in a separate vessel which is no different from a barrel standing under the pipe through which the juice flows from press to cistern; any touch by the Gentile will turn it into forbidden libation wine.

114 He objects to making a difference between places where some juice is left; any juice left in the vat has the same status as juice in the cistern.

A wine press on which a Gentile stopped a leak from the inside is forbidden, from the outside permitted, for it is impossible that there not be wet bast where he touches and turns the entire cistern into libation wine.

Rav Huna in the name of Rav: The jet is like the cistern. Rebbi Ze‘ira asked: Everywhere you do not say that flow is connection, but here you are treating flow as connection? Rav Huna is of the opinion that if the cistern became libation wine, the flow became libation wine; if the flow became libation wine the cistern did not become libation wine. Rebbi Abba did not say so, but if the cistern became libation wine, the flow did not become libation wine; if the flow became libation wine the cistern became libation...
wine. What Rav Huna said in the name of Rav, the jet is like the cistern, for Rav Huna is of the opinion, just as the cistern becomes libation wine so the jet becomes libation wine. There, they say in the name of Rav, the touch of a Gentile makes libation wine. Rav Nahman bar Jacob said, only when it is flowing.

115 If the wine press were completely dry, there would be no difference whether the Gentile plugs the leak from the inside or the outside. But if it is moist, the bast which he uses to plug the leak retains some wine which then turns the wine press into a vessel like vat and cisterns, and the Gentile’s touch forbids the wine. But from the outside it never can be considered inside a vessel.

116 Babli 55b. The case of the conduit from wine press to cistern which was not treated in the Mishnah is decided: The moment when a drop of grape juice passes the filter at the bottom of the press and enters the pipe leading to the cistern it turns into wine.

117 The basic text is Mishnah Tahorot 8:8 which states that any flow downwards is no connection for impurity while standing fluid on a level surface is. Babli 72a.

118 In these matters, any defect is transferred upwards but not downwards.

119 If the flow was cut off and prevented from reaching the cistern.

120 A libation consists of shaking the wine as an homage to the gods. Therefore if the touch of the Gentile did not move the wine from its position at rest, no libation was made.

An Aramean fell into a cavity. The case came before Rebbi Huna who said, immobilize him until you have emptied the cavity. Rebbi Hanina said, he is moving his hand. He said, bring willow baskets and approach from under his hand.

121 Since libation wine is created by a Gentile moving the wine, the Non-Jew has to be immobilized until the cistern is emptied.

122 Hebrew and Aramaic ṣaf means “to sprinkle” (Note 161). This does not make any sense here. The word is Arabic ژاف “to approach, advance toward”. One brings baskets or mats of willow weave and approaches his arms from below so that his hands are in the air above the wine and cannot move the wine.
Simeon bar Hiyya was instructing Hiyya bar Rav. Starting when does a Gentile make libation wine? He told him, from when he knows the nature of idol worship. (Rav Josha left) [Rav put out his head] from the curtain and told him, you may say this if one buys grapes from the Gentile. But the Gentile proper makes libation wine when he is one day old.

123 This seems to be a question which Hiyya bar Rav asked Simeon bar Hiyya.
124 The translation [in brackets] follows the argument of S. Lieberman (Hayerushalmi Kiphshuto New York 1995, p. 226) that one has to read not diy`i ax wit` but ax wit` diy`x as in Eruvin 1:1, 18d line 33.
125 Babli 57a, where Simeon bar Hiyya actively opposes Rav. Rav admits the leniency only for grape juice flowing from grapes in a vat. But in this case, even an adult Gentile was admitted as help. The leniency applies only to the juice left in the vat after it was emptied of grapes, cf. Note 113.

May a Gentile make libation wine with his mouth? Rebbi Ada in the name of Rebbi Eleazar: A Gentile cannot make libation wine with his mouth. Rebbi Jeremiah in the name of Rebbi Abbahu: A Gentile can make libation wine with his mouth. And we have stated thus: “If a market supervisor tasted from a cup or from a suction pipe and returned to the amphora it is forbidden.” In the opinion of Rebbi Ada in the name of Rebbi Eleazar, only if the Gentile returned it. In the opinion of Rebbi Jeremiah in the name of Rebbi Hoshaia, even if a Jew returned.

126 This should read Greek ἀρχηγὸς “market supervisor”.
127 To check the quality of the wine, whether the customer would not be overcharged.
128 The remainder of the wine.
129 Since they hold that the motion of the wine induced by the overseer’s mouth cannot make libation wine, if the Gentile
returned it to the amphora he causes waves in the wine which makes it libation wine forbidden for usufruct.

129 For him the wine drawn by the overseer is libation wine in all cases; the person who returns the wine to the amphora will make it forbidden in all cases.

Mishnah 9: One may stamp with a Non-Jew in the wine press but one may not harvest with him. With a Jew who works in impurity one neither stamps nor harvests with him but one transports with him amphoras to the wine press and brings with him from the wine press.

130 The grapes are pressed not by a mechanical device but by people stamping on a wooden plank on top of the grapes. All the wine produced is libation wine forbidden for all usufruct. Therefore one could think that a Jew would be forbidden to receive wages for pressing the grapes. But it was explained in the preceding Halakah that the grape juice turns into wine only by flowing into the cistern below the press. Therefore the Jew may receive wages for pressing the grapes whose juice will not be forbidden at the moment of pressing.

131 This Tanna is of the opinion that it is forbidden to cause impurity to fruits of the Holy Land. Since the grapes become impure by being handled by the Non-Jew, a Jewish agricultural worker observing the rules of purity may not help in the Non-Jew’s harvest (cf. Berakhot 1:1, Note 3 and Introduction to Tractate Demay p. 349-350).

132 Working at a time when it was still possible to follow the rules of impurity, a Jew making his wine in impurity was a sinner since he caused his heave and tithes (which are biblical obligations for grain, olive oil, and grape wine) to be impure and therefore forbidden to be consumed by the Cohen. Grapes harvested for wine making are placed in a vat for transport to the wine press. The fluid oozing out of injured grape berries are collected in the vat and also used for making wine. This fluid is welcome; therefore it prepares the grapes for impurity as explained in Demay 2:3 Notes 136,137, 141. An observant Jew harvesting together with an unobservant one is guilty of helping to cause impurity to fruits of the Land. There really is no intrinsic reason to forbid pressing the grapes which already are impure; the prohibition to help in pressing is a general rule “not to support sinners”.

133 Transporting empty amphoras to the wine press is not connected with any impropriety; it is not even forbidden to fill impure wine into pure amphoras which thereby will become impure. Transporting
amphorae filled with impure wine from the wine press is permitted since all forbidden

Halakhah 9: “One may stamp with a Non-Jew in the wine press,” etc. Rebbi Jonah said, that is, you say only if they walked over it crosswise. But if they did not walk over it crosswise, it does not apply. Rebbi Yose asked, if they walked over it crosswise, even following the earlier teaching? As it was stated. “Originally they were saying that one harvests grapes with the Non-Jew and stamps with a Jew who works in impurity. They changed and said, one does not harvest grapes with the Non-Jew nor stamp with a Jew who works in impurity, but one stamps with a Gentile and helps him as long as it did not disappear from sight. Once it disappeared from sight it became libation wine.”

What is Rebbi Jonah’s reason? Because it already became impure when it was prepared by the grape harvest. What is the reason of Rebbi Yose? They were pure by biblical standards. You are the one who decided that they be impure. The strength of Rebbi Yose is the following, as Rebbi Yose said in the name of Rebbi Hila. It should be logical that one may (free) his tevel as it is written, you should give it to the Eternal’s heave to Aaron the priest. You have to give it to Aaron in his quality of priest. But here, since you cannot give it to Aaron the priest in his quality of priest, you make it impure.
134 Since Gentiles are considered impure under the rules of a sufferer from gonorrhea (Babli 36b), the moment a Gentile steps on the planks on top of the grapes everything is impure by “stepping on” (Chapter 3:8, Note 181). It is not really necessary that the Gentile walk on the plank in two different directions. Since then the entire contents of the wine press are impure: the Jew does not help to make them impure.

135 There seems to be no reason for R. Jonah’s rule since the entire harvest becomes impure at harvest time, Note 132. There never should be any reason not to press grapes with a Gentile.

136 Tosephta 7:1, Babli 55b.

137 In both sources, one reads: “Originally they were saying that one does not harvest grapes with the Non-Jew and does not stamp with a Jew who works in impurity.” This text must be supposed also for the quote here. If one holds that it is forbidden to cause impurity to the fruits of the Land then one may not harvest with the Gentile because this is the moment when the grapes become impure.

138 The second part of this baraita parallels the Mishnah; it is missing in the Tosephta. In the Babli text it reads “one does not stamp with the Non-Jew”; this is explained as a precaution because if the Gentile has a small harvest and decided to make red wine by leaving the skins in the fluid, the easiest way would be to plug the pipe leading to the cistern and use the press itself to let the wine ferment. Then the act of pressing makes libation wine and the Jew’s wages would be forbidden for usufruct. The Yerushalmi very reasonably does not consider this a possibility.

139 As explained before, this is R. Yose’s argument.

140 This is R. Jonah’s argument. There is no biblical impurity for Gentiles; the laws of impurity are uniquely formulated for Jews. The imputation of impurity (permanent and irrevocable) for Gentiles is rabbinical (Babli 36b). The exclusion of Gentiles from the Temple precinct is not because of impurity but because of their being disqualified.

141 The source of this statement (in another context) is Hallah 3:2, Note 53.

142 This text makes no sense either by itself nor in this context. Tevel is produce under the obligation of heave from which heave was not yet taken; it may not be consumed. By all standards a person is not only permitted but obligated to free his tevel by separating the heave. The text in Hallah correctly reads: “a person may make his tevel impure by biblical standards.” The main point of the argument is given there but omitted here. Heave not only must be consumed in purity but it is stated in Num. 18:8 that the priests have a special duty to guard heave from impurity. It follows that this duty does not apply to tevel, which therefore may be allowed to become impure; disagreeing with the hypothesis underlying the Mishnah.

The quote here refers to a different subject. Heave given to Aaron in his quality of priest is pure heave for which he can exercise his duty to watch it and consume it in purity. But once produce has incurred even a doubt of impurity it can no longer be consumed by the Cohen; this eliminates not only the duty of guarding it but all rules made to safeguard it. If the rules of purity
no longer can be observed there remain no restrictions on harvesting and pressing grapes with a Gentile.

143 Num. 18:27.

Mishnah 10: If a baker works in impurity one does not knead with him\(^{144}\) nor form the bread with him\(^{145}\), but one may bring bread to the seller\(^{146}\) with him\(^{147}\).

144 For kneading one must wet the flour; this prepares it for impurity and, in an impure bakery, makes the dough impure.

145 The dough already is impure when it is formed; this prohibition falls under the general prohibition “to support sinners.”

146 Greek πρατήρ (Buxtorf) or πολιτήρ (Krauss) “seller”.

147 Since the bread is fully baked, transporting it is not “to support sinners.”
Halakhah 10: “If a baker works in impurity,” etc. One states about this: One does not moisten, nor grind, nor mix with him.\(^{148}\) Rebbi Hila said, here for profane [bread], there for heave. Can you say heave at a baker’s? The colleagues: one if he moistens, the other if he does not moisten.\(^{150}\) But did we not state: “But she may not touch hers once water has been put in because one does not support transgressors.”

Rebbi Hyya and Rebbi Immi. One said, “plough it well; then I will rent it from you after the Sabbatical.” The other one said, “may you succeed.” For him who said, plough it well; then I will rent it from you after the Sabbatical, what means “one greets them”? “May you succeed.” But he who said that one says to a Gentile, may you succeed, what means that one greets Jews? “Peace be on you.”

Explanation. Rebbi Hanina bar Pappa and Rebbi Samuel bar Nahman passed by one of the ploughmen in the Sabbatical. Rebbi Samuel bar Nahman said to him, may you succeed. Rebbi Hanina bar Pappa said to him, did not Rebbi teach, the passers-by did not say, etc., that it is forbidden to say “may you succeed” to one who ploughs in the Sabbatical? He told him, you know how to read but you do not know how to make a homily. The passers-by did not say, these are the nations who pass out of the world because they did not say to Israel, the blessing of the Eternal is on you. What does Israel say to them? We bless you in the name of the Eternal. Israel says to them, all the good things and happy circumstances that come into the world because of us are not enough for you; you do not say, come and take from these blessings for yourselves, but you roll over us pro-rated contributions and fines, head taxes and annonae.\(^{159}\)

\(^{148}\) One either moistens the grain before grinding to facilitate the separation of chaff from flour or one washes the grain before grinding to eliminate impurities such as pebbles. In any case will the moistening make the grain susceptible to impurity. Even if the grain was dry milled, moistening the flour to make dough will bring on the impurity. Only grinding itself is solely forbidden not “to support sinners.”

\(^{149}\) From here on this is taken from Ševi’it 5:9 (Notes 92-97)\(^7\), 4:3 (Notes 52-57)\(^*7\).

Instead of the baraita quoted here, one states in Ševi’it: “One should neither cull
nor grind nor sift with him.” These are all done dry when the grain still may be immune to impurity. The question is to explain when each of the baraitot applies.

150 Since it has been established that the Cohen has the duty to guard his heave, he has to bake his heave bread himself or at least have it baked under his strict supervision; he is forbidden to hand it over to a commercial baker. The explanation of the colleagues is the only acceptable one. Quoted in Tosaphot Gitt in 61a/b s.v. ‘yix.

151 Mishnah Sevi`it 5:9, speaking of an observant woman baking together with one who does not observe the rules of purity.

152 This explains the last sentence in Mishnah Sevi`it 5:9 that one encourages Gentiles in the Sabbatical and that one greets Gentiles for communal peace. What is the difference between encouraging and greeting?

153 This is the greeting of Gentiles endorsed by the Babli, Gittin 62a.

154 The text of Sevi`it 5:9 is more convincing: One greets Gentiles in the same way one greets Jews.

155 Greek δήλωμα.

156 Ps. 129:8.

157 Aramaic and Syriac piece, here used in the sense of individual contribution to a tax imposed on the community (I. Löw).

158 Greek ζήµια.

159 The annual contributions in kind for the upkeep of the Roman army.

160 The baker who works in impurity. The scribe in Sevi`it 5:9 started to write this sentence, then he noticed that there it makes no sense. This determines Avodah zarah as origin of the preceding paragraph.

161 Moisten baking goods. It would be possible to translate “to load (the oven)”; cf. Note 122.

Rebbi Immi instructed: It is forbidden to take the bread out of the oven with him. Similarly, it is forbidden to sprinkle with him.

Mishnah 11: A Non-Jew who was found standing next to a wine cistern, if he has a loan secured by it, [the wine] is forbidden, if he has no loan secured by it, it is permitted. If he fell into the cistern and climbed out, or
measured it with a measuring rod; if he tried to hit a wasp with a stick, or was drumming on the mouth of a fermenting amphora; all these cases happened and they said, it should be sold, but Rebbi Simeon permits. If he took the amphora and threw it into the cistern, this happened and they declared it kosher.

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The Jewish owner’s wine is mortgaged to a Gentile. Then it may be assumed that the Gentile touched the wine, which makes the wine forbidden for the Jew. The Gentile may take the wine as repayment of the loan.

163 The stick did not hit the wasp but the wine in the amphora. This certainly is not libation wine but it was hit if not by the Gentile so by the force of his arm; the wine is forbidden as drink but permitted for usufruct.

166 In a rage; there is no libation.

167 Even to drink.

Halakhah 11: “A Non-Jew who was found standing,” etc. Rab Sheshet in the name of Rav: Only if he has a lien on this particular cistern. But if he has no lien on this particular cistern, it is the way of creditors to stand near wine presses and threshing floors. They wanted to say, he who says, only if he has a lien on this particular cistern, within his outstretched arms, but he who says, even if he has no lien on this particular cistern, even outside his outstretched arms. But did not Rebbi Abba say in the name of Rav Sheshet, just as they gave outstretched arms for purity so they gave it for libation wine? But it must be so: He who says, only if he has a lien on this particular cistern, within his outstretched arms, but he who says, even if he has no lien on this particular cistern, only outside his outstretched arms.
The Mishnah could be read as applying to a loan secured by all wine in the possession of the debtor. It is now asserted that in the opinion of Rav (in the Babli, 60b, of Samuel) only the holder of a lien on the particular cistern will consider the wine his property and therefore touch it without hesitation whereas a lender on a future harvest will only visit wine press and threshing floor to ascertain that the harvest is sufficient to secure his claim but he will not touch the produce or the wine since it is not his. In the Babli, this is the only opinion declared consistent with the following Mishnaiot; the discussion in the Yerushalmi shows that the opposing opinion is considered equally valid.

The definition of “next to” is “within reach of his hands without moving his body.” This is the definition accepted for the distance in which a person not following the rules of impurity makes vessels and food impure by his presence (Mishnah Tahorot 7:3).

Since he is more restrictive than the first opinion, one may assume that he is more restrictive in this matter also.

Halakhah 5:6 (45a l. 1).

The definition of “next to” is independent of the circle of persons to which it is applied. In all circumstances, “next to” means what can be reached without moving one’s body.

Mishnah 12: One who makes a Non-Jew’s wine in purity and leaves it in his domain, in a house open to the public domain in a city where there are Gentiles and Jews it is permitted, in a city where all are Gentiles it is forbidden unless he install there a watchman. But the watchman does not have to sit there and watch; even if he leaves and reenters it is permitted. Rebbi Simeon ben Eleazar says, all Gentiles’ domains are the same.

The Jew uses a Gentile’s winery to make kosher wine to sell the wine to Jews.

Where the public has open access. If a Jew saw the Gentile near the wine, he could not anymore sell the wine to Jews. Since this would be costly to him, one may assume that the minor oversight provided by the occasional Jewish visitor is sufficient.

On condition that he not tell anybody when he would leave or come back.

There is no difference between the owner’s property or that of any other Gentile
in this matter.

Halakhah 12: “One who makes a Non-Jew’s wine in purity,” etc.

Rebbi Abin in the name of Rebbi Samuel, practice follows Rebbi Simeon. Rebbi Abin in the name of Samuel. I am atoning for Rebbi Simeon, either permit to drink or forbid for usufruct. Rebbi Jeremiah said in the name of Rebbi Abbahu. There was a case and they permitted for drinking following Rebbi Simeon. Rebbi Samuel in the name of Rebbi Abbahu: A Gentile does not make libation wine by throwing. Does a Gentile make libation wine in his rage? Let us hear from the following: An Aramean had boxes in a wine press. There came a Jew and sprinkled wine on them. The Aramean came [with] a pitcher and poured it out into the cistern. The case came before the rabbis who said, a Gentile does not make libation wine in his rage.

Rebbi Jeremiah in the name of Rebbi Hiyya bar Abba. One who mixes wine, with hot water it is forbidden, with cold water it is permitted. It should come over me, if I ever did this. Rebbi Yasa went to Tyre. He saw them drinking wine with hot water and an Aramean was mixing. He told them, what did allow you?

177 This Halakhah in its entirety refers to Mishnah 11, not Mishnah 12.
178 Who in Mishnah 11 permitted to drink wine which the Sages only permitted for usufruct. This tradition is quoted in the Babli 60b but in the end rejected.
179 This is an expression traditionally used by the son speaking of his father. He considers himself the spiritual son of R. Simeon (ben Iohai).
180 R. Simeon holds that any wine not forbidden for usufruct is not forbidden as drink.
181 If the Gentile never touched the wine.
182 An Aramean had boxes in a wine press.
183 [with] a pitcher and poured it out into the cistern.
184 [with] a pitcher and poured it out into the cistern.
185 He saw them drinking wine with hot water and an Aramean was mixing.
186 He saw them drinking wine with hot water and an Aramean was mixing.
but moved it by throwing the bottle in which it was stored, he cannot possibly have made it into libation wine. Quoted in Tosaphot 59a/b s. v. מים.

183 It might be better to read "brought" instead of "came".
184 He never let a Gentile pour water in his cup of wine.

185 In the Babli 58b a similar story is told of R. Jeremiah himself. The problem with the text here is that R. Yasa was one of the teachers of R. Hyya bar Abba, the teacher of R. Jeremiah’s teacher R. Ze’ira.

186 “What”, not “who”. He made it clear that he did not think that any rabbi would allow this.

Mishnah 13: One who makes a Non-Jew’s wine in purity and leaves it in his domain, if this one writes to him that I received the money, it is permitted. But if the Jew wants to remove it and he does not let him do it before he paid him his money, this was a case in Bet Shean and the Sages forbade.

187 Without a guard.
188 Since the Gentile has recognized the wine as the Jew’s property he will not touch it and expose himself to a suit for damages.
189 The Gentile shows that he considers the wine his property until the rental fee for his wine press and wine cellar was paid. This makes the wine Gentile and forbidden.

Halakhah 13: “One who makes a Non-Jew’s wine in purity,” etc. Rebbi Abbahu in the name of Rebbi Yose ben Rebbi Hanina: Not only a door but even a window wide four by four and high ten, on condition that it be roofed and glued closed. If it was growing, we would say if he is seen...
climbing up and coming down it is forbidden, otherwise it is permitted\textsuperscript{193}. Rebbi Abba in the name of Rav Jehudah: The Mishnah speaks of a town “with double doors and bolts.”\textsuperscript{194} Was it stated in that case “a watchman even if he comes only at intervals”?

190 This Halakhah discusses Mishnah 12.
191 Since the numerals are masculine they denote hand-breadths, not quite 10cm. An opening of 4-by-4 and high 10 is considered a door also for the rules of impurity.
192 Not the door but the amphora in which the wine is stored. It cannot be left open in the Gentile’s place under any circumstances but must have a cover, “be roofed”, and the cover must be glued to the amphora by clay which is left to dry. Then it is sufficient that an occasional visitor check that the clay seal is inviolate.
193 If the wine is stored on a tree (a seemingly unlikely case but which is mentioned also in the Babli, 61a). If an amphora is stored at a place reserved for it and the Gentile is seen going there where he has no reason to be, the wine will become forbidden since one must suspect him of removing the seal, taking some wine, and resealing.
194 A fortified city; the expression is Biblical (Deut. 3:5). In the Babli the author is Samuel, Rav Jehudah’s teacher and the statement is accepted as authoritative. According to Rashi, the reason is that there all inhabitants are known and easily checked out; therefore one does not need a permanent presence of the watchman.
195 If it is a closed society and everybody is watched by everybody else, the watchman cannot make a surprise appearance. Then it cannot be true that he does not have to guard continuously.

It was stated\textsuperscript{196} “A Jew and a Gentile who brought their wine into the surroundings\textsuperscript{197} of the city, even if the watchmen are Gentile, even if the amphoras are open, they are permitted since one does not make a libation in this way.”

(44b line 66) הקיות פותחות מעוררות שלמיםคอนכינים כר
ربي הכי בשם רבי יוא. קלותה קמעה. חמי קר. אקד הלקה והקד פוכר ברשות חמי.
בגופך שיםו על עליים אלעלאל שלם ומאור. ישראל שימה על פסות וחותם. בণון שים
שלמים 이상לאל שלם מאור. ישראל שימה על פסות וחותם. אנו אין ישראה דר שלם אسور
אפ על פי יושיב על פסות וחותם.
ربيכי בשם רבי יוא. קלותה על רבי שיעון ובי ינור. לא על דכר אלפביתוリアルעל
כדא ביביטרה. קמותו יני שלככר וימל.

436 AVODAH ZARAH CHAPTER FOUR
Rebbi Hila in the name of Rebbi Yannai: The buyer has the same status as the seller. It was stated thus: Whether the seller or the buyer [stores] on the Gentile’s property. If the wine is the Jew’s and a Jew lives there it is permitted on condition that in his hand are key and seal. If the wine is the Gentile’s and a Jew lives there it is permitted on condition that in his hand are key and seal; but if no Jew lives there it is forbidden even if key and seal are in his hand.

Rebbi Ilai in the name of Rebbi Yannai: They disagree with Rebbi Simeon ben Eleazar. Not on this was it said but on the following, “one who makes an Non-Jew’s wine in purity,” etc.

196 Tosephta 7:10.
197 According to H. L. Fleischer this is derived from Greek περιοχή in its meaning “circumference”. In the Tosephta, the corresponding word is (Persian)  suburb”. This is translated here.
198 In the Babli, 61a/b, “buyer and renter”. The Yerushalmi’s version is preferable since the Mishnah refers to the producer who is the seller. The rules about storage are identical for producer and buyer.

199 The key to the storage room and the seal either on the covers of the amphoras or, if the amphoras are open, on the door to the storage room.
200 The disagreement is not about the statement of R. Simeon ben Eleazar applied to Mishnah 12, where everybody agrees that the identity of the Gentile is irrelevant, but about Mishnah 13 where the majority insists that it refers only to the owner of the wine press.
Mishnah 1: If somebody hires a worker to work for him on libation wine, his wages are forbidden. If he hired him for other work, even though he told him, transport an amphora of libation wine for me from one place to another, his wages are permitted.

1 If a Gentile hires a Jewish worker specifically to work on his wine, the wages are forbidden to the worker for all usufruct. The rule which makes it impossible for the Jewish worker to be hired in this way is purely rabbinical; it is not implied by the fact that libation wine is forbidden for usufruct for a Jewish owner.

2 The moment that libation wine was not mentioned at the time of the hiring, there is no obligation on the worker to refrain from being occupied with libation wine.

Halakhah 1: “If somebody hires a worker,” etc. Does he not give him his wages? Rebbi Abbahu in the name of Rebbi Johanan: They fined him a fine.

4 It was stated: “The wages of donkey drivers, carriers, and all those working with Sabbatical produce are sabbatical.” Rebbi Ze‘ira said, this baraita deals with permitted produce. And what Rebbi Johanan taught those of the House of Rebbi Yannai that they should not accept in their hands wine as wages but money, he taught them following Rebbi Jehudah and Rebbi Nehemiah. Rebbi Ilai said, this baraita deals with idolatrous produce.
Rebbi Abbahu said in the name of Rebbi Johanan, in matters of libation wine they fined him a fine.

3 A customary restriction without justification in law.
4 This paragraph is a shortened and somewhat corrupt copy of one in ševi‘it 8:6, Notes 94-98.
5 Babli 62a, Tosephta ševi‘it 6:26.
6 They should only be used to buy Sabbatical produce to be eaten, not processed.
7 While the paragraph in general looks like a bad copy of the one in ševi‘it, the reading odicia “in their hands” is superior to the reading odica “of their olive presses” of both ševi‘it mss. There is no question why one should be paid in wine for using an olive press.
8 Who in ševi‘it (8:4 Note 69, Tosephta 6:21) forbid to pay for anything, even for food, with sabbatical produce.
9 This reading is quite impossible; idolatrous produce does not exist. In ševi‘it: “forbidden produce”, stored sabbatical produce at a time when wild animals no longer can find produce on the fields, which has to be consumed immediately.

If he transported for him amphora against amphora, you fine him in his own amphora up to the amount of his wages. If he paid him his wages in land. Everywhere you are saying that land is not forbidden, here it is forbidden. If he paid him his wages in an animal. Everywhere you are saying that anything breathing is not forbidden, here it is forbidden. If he gave him anything as his wages, is everything forbidden or only up to the amount of his wages? If he worked for him for goodwill, do you impound his property in the value of his wages?
If he worked for him half a day in prohibition and half a day in permission. If he was selling profane [food] and Second Tithe together, [the buyer] has the choice of treating as profane what he chooses and as Second Tithe what he chooses. Is this the same here? Let us hear from the following. If somebody hires a worker to bring wine to a sick person; if he delivered [the employer] has to pay him, otherwise he does not have to pay him. But if he told him, wine for a sick person from place X, an apple for a sick person from place X, whether or not he delivered he has to pay him, for he pays the wages of his feet. And here, does he not pay the wages of his feet?

Rebbi Jeremiah asked, if he hired him to break amphoras of libation wine; is it forbidden anyhow?

10 The language is not clear and the proposed interpretations are unfounded. It seems that the worker is not paid as a worker for his time but as a contractor by the piece, and is not paid in money but receives an (empty) amphora.

In the entire paragraph it is equally possible not to read the sentences as apodictic statements but as questions. If he is paid in land, is the land forbidden? Etc.

11 That he might be forced to sell the amphora and destroy coins in the equivalent of his wages.

12 Halakhah 3:6, Note 125.

13 Halakhah 3:6, Note 140.

14 Which clearly is worth more than the amount due for his wages.

15 This statement is not found in any parallel source but no opposing opinion is noted. While it is necessary to “give a name” to the Second Tithe due for a harvest, it is not necessary bodily to separate it from the remainder of the harvest. If the farmer does not intend to bring his tithe bodily to Jerusalem, he may sell it and transfer its sanctity to the money. The buyer then has to separate tithe from profane food but is not restricted in his choice; cf. Introduction to Tractate Ma’aser Šeni.

16 Ševi`it 8:4 Note 65. In the first case the worker is hired as a contractor, in the second as a worker who has to be paid for his time.

17 There is no reason to impound the wages for the time he worked in a permitted way.

18 In the Babli 63b the question was asked by Amoraim of the second generation and answered in the negative.
Assi said, the proceeds of libation wine in the hands of a Gentile are prohibited. The proceeds of an idol in the hand of a Gentile, Rebbi Jonathan said it is permitted, Rebbi Johanan said it is prohibited. A baraita supports one and a baraita supports the other. A baraita supports Rebbi Johanan: “A Gentile who owed money to a Jew should not tell him, wait until I sell libation wine, until I sell an idol, and I shall give it to you. I am saying, maybe he exchanged.” A baraita supports Rebbi Jonathan: “A Gentile who owes money to a Jew may sell libation wine and give to him, an idol and give to him. Because of the bad impression?”

Everybody agrees that substitutes are forbidden. What about substitutes of substitutes? Rebbi Hanina said, a disagreement between Rebbi Ismael and the rabbis. Rebbi Ismael ben Rebbi Yose said, forbidden. But the rabbis say, permitted. Rebbi Eleazar ben Hoshiaia, the reason of the rabbis, you would be banned like itself. Anything which you can keep from it is like itself. What about it? Rebbi Yose ben Rebbi Bun said, like itself, like itself two times, because of nothing should cling to your hand from the ban.

19 They are not forbidden to the Gentile, only to a Jew who knows that this money was received as payment for wine whose usufruct is forbidden to Jews. From the argument in the text it seems possible that one should read; “Assi said, the proceeds of libation wine in the hands of a Gentile and the proceeds of an idol in the hand of a Gentile, Rebbi Jonathan said it is permitted, Rebbi Johanan said it is prohibited”, since in the proof texts wine and idols are always treated in parallel. On the other hand, the preceding text (Notes 11-12) notes that the prohibition of wine, a purely rabbinic custom, follows much stricter rules than the biblical prohibition of idols.

20 Babli 64a. If the Gentile tells the Jew that he gives him money received for forbidden wine or idols, the Jew may not accept since we must assume that the
Gentile tells the truth. In the Babli’s tradition, this is accepted by everybody; in the Yerushalmi this is particular to R. Johanan.

21 This is read as meaning that in all cases the Jew may accept the money and does not have to worry that people will say that he accepts idol money. The Babli would interpret the baraita as stating that the Jew may accept the money as long as the Gentile does not explicitly declare it as idol’s proceeds.

22 The entire paragraph has a parallel in the Babli, 54b. Anything received in barter for an idol must be destroyed as if it were the idol itself.

23 Deut. 7:26.

24 Any proceeds are like the idol itself. But nothing is said about proceeds for barter of the proceeds.

25 The expression נִקָּשֶׁה קְטֻמָּה appears only once in the biblical text. The argument gives the reason for R. Ismael ben R. Yose’s position. If the proceeds obtained by barter for an idol are an idol, then the proceeds in barter for the proceeds are also an idol; in effect, the prohibition never stops.


Mishnah 2: If somebody hires a donkey to transport libation wine, its wages are forbidden. If he hired it to sit on it, even though he put his barrel on it, its wages are permitted.

27 A Gentile. The Mishnah is parallel to Mishnah 1; only rentals made for the explicit purpose of transporting libation wine (or idols) is forbidden, not occasional use if the hiring was for general purposes.

28 Greek λάγωνος, λάγηνος, Latin lagena “bottle”, also a measure. Middle High German lägen “small barrel; a measure of volume or weight”.

Halakhah 2: “If somebody hires a donkey,” etc. How far? Up to when the donkey takes offense.

29 If the weight of the rider and the barrel would be more than the normal load of a donkey, the contract would be for transporting the wine and illegal.
Mishnah 3: If libation wine fell on grapes, one should wash it off and they are permitted; but if they were split they are forbidden. If happened that Boetius ben Zenon brought dried figs in a boat when amphoras of libation wine broke over them. The case came before the Sages and they permitted. This is the principle: Anything where the taste improves the use is forbidden; anything where the taste does not improve its use is permitted, such as vinegar on broken beans.

30 If the taste of the forbidden wine improves the taste of the food on which it fell.
31 If the spill was accidental, it is not necessary that the wine actually diminish the value or enjoyment of the food on which it fell.
32 In the Halakhah both here and in the Babli (67a) R. Johanan restricts this to wine falling on a dish of hot broken beans or peas.

Halakhah 3: “If libation wine fell on grapes,” etc. Our Mishnah if their seal is not loosened. But if their seal was loosened they are as injured.
How do you treat them? Like wine in wine or wine in a dish? If you treat it like wine in a dish, according to everybody it is forbidden. If you treat it like wine in wine, there is the disagreement between Rebbi Meïr and the Sages.

Rebbi Johanan said, this you say if it is hot. But cold it is forbidden, for the people of Sepphoris are used to make it and call it laxative. If it was hot and one cooled it down? Then even hot it should be forbidden since usually it cools down.

As we have stated. “Everything that can be smelled is forbidden, whether it improves or spoils, the words of Rebbi Meïr. But the Sages say, if it improves it is forbidden, if it spoils it is permitted,” as for example vinegar which fell into broken beans. Rebbi Yasa in the name of Rebbi Johanan: It is Rebbi Meïr’s, as we have stated there: “If barley grains fell into a cistern of water, even though they made it stink, [the water] is permitted.” About this Mishnah, Rebbi Meïr says it is in dispute, Rebbi Johanan and Rebbi Simeon ben Laqish: everybody’s opinion. Rebbi Yose ben Rebbi Abun said this tradition so: In the opinion of Rebbi Meïr it is in dispute, in the opinions of Rebbi Johanan and Rebbi Simeon ben Laqish it is everybody’s opinion.

33 Grapes which still sit on the vine with intact skin are sealed; if libation wine falls on them one washes the bunch and it is permitted. But loose grapes have a hole where they were sitting on the vine; the libation wine enters through this hole and cannot be removed.

34 What is the reason that injured grapes on which libation wine fell are forbidden?

35 If wine of one kind is mixed with wine of another type, for wine cognoscenti this definitely is spoilage. But wine added to a cooked dish improves the taste.

36 As noted later, if the forbidden admixture improves the taste, the mixture is forbidden according to everybody. But if it spoils the taste, the rabbis opposing Rebbi Meïr do permit consumption of the food.

37 This paragraph is an intrusion here; it should be placed at the end of the Halakah since it refers to the last statement in the Mishnah, forbidden vinegar on broken beans. Ihe parallel is in the Babli, 67a.

38 In the Babli, the dish of Sepphoris is called שליליס. This probably comes from the Babylonian pronunciation of ה as ה. As the Babli reports, Megillah 24b, Rebbi told R. Hiyya the Babylonian to be careful if he quotes Is. 8:17, “I am waiting for the Eternal”, not to blaspheme by saying “I am hitting the Eternal.” Now שליליס are watercresses, not making sense for the context. The root שלל is not documented in Hebrew
or any of the Talmudic Aramaic dialects; but one of the many meanings of Arabic سهل is “to purge, to act as laxative.” This is taken as the meaning here. It cannot be determined whether the word was pronounced with א or ע, even though א is more likely.

39 An implied answer to this question is found in the Babli: Vinegar in the cold dish improves the taste and therefore makes it forbidden. If the dish then is heated the vinegar spoils the taste but this does not remove the prohibition. Cooling the dish after heating leaves the dish spoiled.

40 This paragraph is a corrupted version of one in Terumot 10:2 (Notes 20-24), Orlah 2:5 (Note 121). It is the continuation of the discussion why and under which condition contamination with libation wine makes food prohibited. Babli 67b/68a.

41 Tosephta Terumot 8:9.

42 Mishnah Terumot 10:2. The barley grains are heave, forbidden to anybody but a Cohen. Since they spoil the taste of the water, they impart no sanctity to it. The water remains permitted to everybody.

43 This sentence and the following one are impossible; Rebbi Meïr the fourth-generation Tanna cannot engage in a discussion with the second generation Amoraim RR. Johanan and Simeon ben Laqish. The correct statements are from Orlah and Terumot: “About this Mishnah, Rebbi Johanan says it is in dispute, Rebbi Rebbi Simeon ben Laqish said it is everybody’s opinion. Rebbi Yose ben Rebbi Abun said this tradition so: In the opinion of Rebbi Johanan it is in dispute, in the opinion of Rebbi Simeon ben Laqish it is everybody’s opinion.”

44 The Jew transports kosher wine and hires a Gentile as help. Even if the Jew does not see the Gentile at every moment; the fact that the Jew is around will prevent the Gentile from touching the wine if he knows that he would lose his job and face a damage suit.

45 The Jew informed the Gentile that he was leaving, the time needed to open, close, and fill the hole; Rabban Simeon ben Gamliel says, to open, and close, and dry.
closed. If the expected time of absence of the owner is sufficient for the Gentile to drill a hole in the cover, close it again and seal it, the wine becomes forbidden.

47 He thinks that the owner upon his return would recognize a hole freshly filled. He therefore forbids the wine only if there was time for the Gentile to remove the old seal completely, make a new one and have it dry to become undetectable.

Halakhah 4: “A Non-Jew who was transporting,” etc. Rebbi Samuel said, it happened that a Non-Jew was transporting wine jugs with a Jew from one place to another. The case came before Rebbi Abbahu who forbade. They said, the case was about open containers. Rebbi Zeriqan said, not only full ones but also short ones; for he suddenly could have touched with his hand and removed it.

You may be of the opinion that Rabban Simeon ben Gamliel’s statement was a leniency, but rather it is a stringency. For the opening of the rabbis leaves little of the cover.

48 The ruling of R. Abbahu does not contradict the Mishnah. The wine containers are only “presumed to be watched” if on top they are closed with a clay cover. Open containers, where the wine could be touched in no time, are never “presumed to be watched”.

49 Even if the container has a narrow neck and is not full, so that even without a cover it is not possible for the Gentile to touch the wine and remove his hand in less than a second, the wine is forbidden.

50 While Rabban Simeon requires time for the cover to dry, he envisages the possibility that the Gentile drill a small hole in the cover, whereas the rabbis only contemplate the removal of most of the old cover.
Rebbi Jehudah ben Pazi in the name of Rebbi Immi: A roasted egg of Samaritans is permitted. Rebbi Jacob bar Aha in the name of Rebbi Eleazar: Samaritans’ dishes are permitted. This is what you say about a dish usually made without wine or vinegar. Therefore if it is certain that he put some in, it is forbidden even for usufruct. As what had been stated: In earlier times they used to say, why is the wine of Ogdor forbidden? Because of Kefar-Pagesh, and of Burgata because of the Saracen tower, and of the Kushit spring because of Kefar Shalem. They changed to say, open it is everywhere forbidden, sealed it is permitted. Perforated and repaired it is like sealed, Rebbi Isaac ben Haqula said, it is like open. Rebbi Hanina said, I can confirm. If it has a cavity on it it was not opened, otherwise it was opened. As the following: Rebbi Simeon ben Eleazar went to the city of Samaria. The scribe came to him. He told him, bring me a closed jug. He answered him, there is a spring in front of you, drink. He importuned him; he said, there is a spring in front of you, drink. When he saw that he was going to importune him, he told him, if you are master of yourself, there is a spring in front of you, drink. But if your soul brings you to rebellion, you are going to swallow a knife if you are too covetous. The Samaritans already are degenerate.

51 There is no suspicion that it not be kosher.
52 Samaritan wine is forbidden as if it were Gentile wine.
53 These places are not identified; also it is not clear whether the wine of the first mentioned locality is forbidden because it is Samaritan close to the second one settled by Gentiles, or that the first locality is Jewish and the second Samaritan. Kefar Shalem may be the place mentioned in Gen. 33.18 as situated near Sichem.
54 Wine sold in open amphoras since there is no controlling who might have touched it.
55 This translation is tentative; it is offered as an educated guess. The proposal of Pene Moshe to read יַרְקָי “cera, wax” instead of יַרְקָי is not very convincing; a wax seal can
easily be counterfeit. The explanation of M. Sokoloff, to read here as at other places “worth, expense” is even less convincing; it seems illogical to assume that wine was not tampered with because it was expensive. The explanation given is based on Arabic “cavity”. If the clay seal on top of the amphora is not plane it probably is original, if it is smooth it may have been tampered with.

56 In the Babli, Hulin 6a, he was sent by R. Meïr to buy wine from Samaritans.
57 Of wine to drink.
58 Prov. 23:2.
59 This projects the Amoraic development of separation of Jews from Samaritans into Tannaitic times (and it was not complete even in Fatimid Egypt.)

Rebbi Ismael ben Rebbi Yose went to the wellknown Neapolis. The Samaritans came to him. He told them, I am seeing you bowing down not to this mountain but to the idols under it, as it is written, he hid them under the terebinth near Sichem. He heard their voices saying, let us get up early and gather those thorns. He understood that they intended to kill him; he got up early and left.

Rebbi Aha went to Emmaus and ate something made in boiling water. Rebbi Jeremiah ate pickles. Rebbi Hizqiah ate locusts. Rebbi Abbahu forbade their wine on the testimony of Rebbi Hiyya, Rebbi Assi, and Rebbi Immi who went up King’s Mountain and saw a Gentile who was suspected because of wine. They came and said it before him. He told them, but not as a pretext. But some say, one Sabbath eve no wine was found in all of Samaria. When Sabbath ended, it was found full from what the Arameans
brought and the Samaritans accepted from them\textsuperscript{67}. But some say, when King Diocletian came here he decided and said, all peoples have to offer libations except the Jews. The Samaritans offered libations and their wine was forbidden. But some say, they have a kind of dove and they offer libations to it.

\textsuperscript{60} The former Sichem, today Nablus. 
\textsuperscript{61} Gen. 35:4.  
\textsuperscript{62} Dumplings or bagels, any grain product prepared in hot water is called מתקי medic. \textsuperscript{63} All three considered Samaritan cooking as kosher. (Also Samaritan slaughter, Babli Hulin 5b).  
\textsuperscript{64} He was suspected of selling Gentile wine to Samaritans. The latter, as Sadducees, had no reason to forbid Gentile wine which was not actually used in pagan exercises.  
\textsuperscript{65} He wanted to forbid Samaritan wine only upon solid evidence.  
\textsuperscript{66} The district.  
\textsuperscript{67} As noted earlier, they had no reason to forbid Gentile wine. But this made Samaritan wine equal to Gentile wine for rabbinic Jews. Of all reasons given, this seems the most plausible.  
\textsuperscript{68} They were buying Samaritan wine for personal use.  
\textsuperscript{69} One could assume that in earlier times Samaritan wine was made according to rabbinic standards. Tosaphot Hagigah 25a s. v. שראויה.  
\textsuperscript{69} As noted earlier, they had no reason to forbid Gentile wine which was not actually used in pagan exercises.  
\textsuperscript{66} The district.  
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\textsuperscript{66} The district.  
\textsuperscript{67} As noted earlier, they had no reason to forbid Gentile wine which was not actually used in pagan exercises.
There we have stated: “The Land of Israel is pure and its ritual baths are pure.” The land of the Samaritans is pure; its ritual baths, and its dwellings, and its paths are pure.” Its paths are pure; it is a presumption that they would not select a path unless it was pure. And its ritual baths are pure; Rebbi Eleazar ben Rebbi Yose: that is, to believe them that they are not from drawn water, but not for the measure of forty; for they explain, only a spring or a cistern, a collection of water, just as a spring cleanses in any amount, any collection of water cleanses in any amount.

They asked Rebbi Abbahu: What is the status of their parboiled food? He told them, if only we also could prohibit their water! Rebbi Jacob bar Aha in the name of Rebbi Hanina: It is permitted to lend to the Samaritans of Caesarea on interest. Rebbi Yose asked, if that is so, we should not be worried about their hallah; but we see that the rabbis do worry.

70 Mishnah Mikwaot 8:1.
71 There is a universal presumption that every Jewish congregation in the Land of Israel will see to it that its ritual baths are built according to the rules (in particular, that the water is natural, ground water or rain water, not from vessels, and that the amount of water is at last 40 seah (a Roman culleus, 20 amphorae) as required by rabbinic tradition. A visitor may use any such mikweh without first investigating its status. Cf. Berakhot 3:4, Notes 164-166.
72 Tosephta Mikwaot 6:1.
73 Gentile dwellings and paths are impure even in the Land of Israel since one has to worry that Gentiles bury their stillborn in their dirt floors or on their paths. Anybody walking over such a spot would become impure by “tent impurity.” The opinion that Gentiles are not sources of “tent impurity” is not found in Yerushalmi sources (Babli Yebamot 61a, attributed to R. Simeon ben Iohai.)
74 They are assumed to be more strict in matters of impurity than rabbinic Jews.
75 The Tanna.
76 Which is a source of impurity.
77 Lev. 11:36.
78 In Sifra Šemini Parašah 9(1) the argument attributed here to Samaritans (as Sadducees) is rejected only because of the rule that יה only must indicate an exclusion. This characterizes the rule that flowing water purifies in any quantity but standing water only in 40 seah as rabbinical but in essence it is also found in the Damascus Document CD X 11.
79 Which only could be forbidden if
Samaritans were considered Gentiles.

80 He considers them as Gentiles.

81 A Gentile baker does not have to give hallah and should he give it would not have any holiness. If the rabbis insist that Samaritan bread may be used only if hallah had duly been given, the attitude of R. Jacob bar Aha and R. Abbahu is rejected. Since R. Jacob bar Aha was one of the teachers of R. Yose, one has to assume that the latter’s position is that of his foremost teacher, R. Jeremiah.

Mishnah 5: If somebody leaves his wine on a cart or a ship and went by a short-cut, [even if] he entered a town and took a bath, it is permitted. If he told him that he was leaving, the time needed to open, close, and fill the hole; Rabban Simeon ben Gamliel says, to open, and close, and dry.

82 Latin carrum. The teamster transporting the wine (in sealed amphoras) is Gentile.

83 A ship on a river.

84 Latin compendiarium (iter); cf. Berakhot 1:1, Note 36.

85 The Jew is out of sight and away for an extended period. Nevertheless the wine is permitted if the Gentile has to expect every minute that the owner of the wine might return.

Halakhah 5: “If somebody leaves his wine on a cart,” etc. Rebbi Hanina said, it happened that a cart of the family of Rebbi was leaving for more than four mil. The case came before the rabbis who declared it kosher. It was on the road to Sidon populated by Jews. Rebbi Hanina said, sometimes he sees a fence formed by thorn bushes and he thinks that they are people and is afraid.
86 Quoted in Or Zarua 240 (edition of Makhon Yerushalaim 2010, vol. 3 p. 650b); referred to in the Babli, Sabbath 122a.

87 The distance between the Jewish overseer and the Gentile driver. The mil referred to here probably is a quarter of a Greek parasanges, 1380 m.

88 In this interpretation, such a large distance is acceptable only if the cart at all times was seen by Jews.

89 In Or Zarua, R. Hama, a more likely reading. The attribution to R. Hanina of the original statement is confirmed by the Babli.

90 Which may look like human shapes at a distance.

Mishnah 6: If somebody leaves a Gentile in charge of his store, even though he [intermittently] leaves and returns, [the wine] is permitted. If he told him that he was leaving\(^4\), the time needed to open, close, and fill the hole\(^5\); Rabban Simeon ben Gamliel says, to open, and close, and dry\(^6\).

Halakhah 6: “If somebody leaves a Gentile in charge of his store,” etc. Following Rebbi Meïr? Did not Rebbi Meïr say, “in any case the house is impure?”\(^9\) Rebbi Hama in the name of Rebbi Yose bar Hanina: If a courtyard is subdivided by a low wall\(^9\), for purities it is impure, in matters of libation wine it is pure\(^9\), since Rebbi Meïr is restrictive for purities but lenient for libation wine; also the rabbis are restrictive for purities but lenient for libation wine\(^9\).

\(^9\) Mishnah Tahorot 7:4. Since an anonymous Mishnah is supposed to follow Rebbi Meïr’s formulation, an apparent contradiction between two statements attributed to R. Meïr must be resolved.
the Gentile. In our Mishnah it seems that R. Meïr assumes that the Gentile will not touch the open amphoras. But in Mishnah Tahorot 7:4 he holds that if a woman keeping all rules of ritual purity invites one careless in these matters to help her in her home all vessels in the home become impure since one must assume that the helper is impure and touches everything in sight.

92 The explanation is Rashi’s (70b, Bava batra 2b). The etymology is unknown; the word certainly is different from פֶּסֶךְ פֶּסֶךְ “pebble”.

93 A courtyard (in the back of houses or walled in, not directly open to the street) has been divided by a low wall as a sign that each party has only the use of its own part. Even though it is easy to step over the partition, the fact that it is raised is enough to create the presumption that the parties will abide by the rules and not trespass. If the dwellers in one part are scrupulous in observing the rules of purity while the others are not (or are Gentiles), the vessels standing in the courtyard of the observant party remain pure. Similarly, if one party is Jewish and the other Gentile, wine amphoras stored in the Jewish part remain permitted since the presumption is that the Gentile will not enter the Jewish part.

94 While a store catering to customers observant in matters of purity certainly cannot have a Gentile employee, a grocery store for the general public can have such an employee. In the Babli, 70b, this is reported as the opinion of Rav, opposed by R. Johanan.

Mishnah 7: If he was eating with him at one table, he put a pitcher on the table and one on a Delphic table, then let him stay there and left. Anything on the table is forbidden, on the Delphic table is permitted. But when he told him, mix with water and drink, also the one on the Delphic table is forbidden. Open amphoras are forbidden, sealed after the time needed to open, and close, and dry.

95 A Gentile.
96 Latin lagena, Greek λάγηνος, λάγυνος; Note 28. The vessels contain wine.
97 Latin delphica (sc. mensa); Chapter 3:2 Note 58. A small ornamental table in the form of the Pythia’s tripod.
98 If the Delphic table is out of the Gentile’s reach when the latter is sitting
99 Since the Gentile guest was given permission to move around.

100 Since wine is taken out from the open top with a bucket. As the French wine making authorities of the Middle ages pointed out, these rules do not necessarily apply to barrels from which the wine is drawn from a spigot near the bottom.

Halakhah 7: “f he was eating with him,” etc. They wanted to say, “anything on the table is forbidden,” within reach of his outstretched arms; “on the Delphic table is permitted,” out of the reach of his outstretched arms. But did not Rebbi Abba say in the name of Rav Sheshet, just as they gave outstretched arms for purity so they gave it for libation wine? But it must be the following. He who said, “anything on the table is forbidden,” within reach of his outstretched arms; “on the Delphic table is permitted,” only if out of the reach of his outstretched arms.

101 In this first version, anything on a separate table is considered out of the reach of the Gentile’s hand even if physically it is within his reach.

102 Halakhah 4:11, Note 171. Since an impure person is presumed to make anything within his reach impure, a Gentile must be presumed to make all wine within his reach forbidden.

103 Both prohibition and permission are conditional.

Mishnah 8: If an investigative unit came to a village in times of peace, open amphorae are forbidden and sealed ones permitted. In times of war these and those are permitted since there is no time to make libations.
Police or military who enter all houses. One may assume that they take from the wine whether or not it is legal. The soldiers cannot risk getting drunk.

Halakhah 8: “If an investigative unit came to a village,” etc. In times of a religious persecution all is forbidden; it is impossible that there was not a single Jew who worshipped it under duress. This implies that an idol which was worshipped by a Jew is never invalidated. Rebbi Yose said, you infer from this that an idol which was worshipped by a Jew under duress is never invalidated.

107 This does not refer to the Mishnah but to a text similar to Tosephta 5:6: Pedestals erected by Gentiles in times of religious persecution (as base for statues of the Emperor or of Rome, Halakhah 3:10 Note 231) are never annulled.

108 This is a statement in Halakhah 4:4, Note 30, for which proof was not given there.

109 The statement is much stronger than the one stated in Halakhah 4:4 since there one speaks of idols genuinely worshipped by a Jew. But here it follows that the act of worship by a Jew makes it permanently forbidden even if the only intent of the Jew was to escape martyrdom. Cf. Babli 54a.

Rebbi Johanan said, there is no “forbidden” here, only “permitted”. Rebbi Ze’ira said, there is “forbidden” here. For if he reaches it he will inform him; if he does reach it he will not inform him, lest he owe him a favor.

Rebbi Immi in the name of Rebbi Johanan: If the investigative unit comes in peaceful or warring manner.

110 R. Johanan deletes the first part of the Mishnah; R. Ze’irah confirms the text of the Mishnah.

111 If the investigator opens the wine amphora, he will inform the owner. Then the wine will be forbidden under the general
rules of wine touched by a pagan; the Mishnah is not necessary in this case. If he does not open the amphora the owner may assume that the investigator did not inform him out of malice; even if there was time for new clay to dry (following Rabban Simeon ben Gamliel) one may assume that the amphora was not touched. It is this later statement which R. Ze’ira objects to.

112 It is not a question whether the investigators are sent by the villagers’ own government or a hostile power but whether they come with friendly or adversary intent, expecting collaboration or hostile reception.

A snake when pursuing him fell in a pit. The case came before the rabbis who declared it usable. They said, there was no time to deposit poison.\footnote{This is an unrelated story; its connection with the Mishnah is the expression “there was no time” to cause damage. The problem here is the general prohibition to drink water or wine that was left standing unsupervised. This is a sanitary, not a religious, rule since we are afraid that a poisonous snake could have drunk from the fluid and in the process left its own poison in the fluid; Halakhah 2:3. Here it is noted that if the snake fell into a cistern full of wine while attacking (a human?, an animal?) it is not intent on drinking but will try to get out, so as not to drown, as fast as possible. Therefore there is no health hazard in drinking the wine.}

113 Mishnah 9: Jewish craftsmen whom a Gentile sent an amphora of libation wine\footnote{Which is forbidden for usufruct to the Jew and therefore worthless to them.} as their wages are permitted to tell him, give us its worth. After it came to their possession it is forbidden.

114 They can refuse to accept the amphora and ask for payment in money. But they cannot accept the merchandise and then request that it be exchanged for money; this would be usufruct of forbidden wine, not payment for work done.
Halakhah 9: “Jewish craftsmen,” etc. Is it not forbidden because of libation wine? Bar Qappara stated, if he sends it to houses\textsuperscript{116}. If the amphora were delivered by a Jewish teamster, he would act as the Jew’s agent and the wine would be forbidden. Similarly, if the wine were delivered by a Gentile to the property of the artisan, the delivery would effect the transfer of property rights and the wine would be forbidden. Therefore one must assume that the Jew rents his place of work in a building dedicated to artisans’ workshops; delivery there by a Gentile transporter does not transfer property rights and the artisan may refuse acceptance and require payment in coin.

Mishnah 10: If somebody sells his wine to a Non-Jew, in case he fixed the price before that one measured, the proceeds are permitted\textsuperscript{117}; if that one measured before he fixed the price, the proceeds are forbidden\textsuperscript{118}. If he took the funnel and measured into a Non-Jew’s vessel, then took it and measured into the vessel of a Jew, if it is contaminated with wine it is forbidden\textsuperscript{119}. If somebody pours from a vessel to another, what is poured from is permitted\textsuperscript{120}, what is poured into is forbidden\textsuperscript{121}. The entire amphora is sold wholesale for a fixed price. By accepting the deal the Gentile becomes the owner and owes the money to the Jew. If then he takes the measuring rod and dips it into the wine, the wine already is his property and what he does with it is irrelevant for Jewish law. If the Gentile buys the wine by volume, the contents of the amphora have to be measured before the deal is concluded. It is essential that the measuring be done by a Jew since if the Gentile dips the rod into the amphora he is moving the wine and this turns it into libation wine forbidden for usufruct. If the wine is sold in retail quantities and a funnel is used to pour from the amphora into a smaller vessel, it is essential that the funnel be thoroughly cleansed after wine was sold to a Gentile. Since the wine becomes forbidden the moment it reaches the Gentile’s vessel, any drops clinging to the bottom of the funnel which was immersed in the Gentile’s wine also are
forbidden. Since libation wine is forbidden in the most minute amounts, a single drop remaining on the funnel turns everything passing through the funnel into libation wine.

120 While we hold that fluids conduct impurity, so that continuous pouring from a pure into an impure vessel will transfer the impurity to the fluid remaining in the upper vessel, we do not hold so for the prohibition of libation wine. Therefore if wine is poured from an amphora into a smaller vessel, the status of the smaller vessel has no influence on the status of the wine remaining in the amphora.

121 The Yerushalmi does not discuss whether wine poured from an amphora into a Gentile’s vessel becomes forbidden when it reaches the vessel or when it leaves the amphora. The difference is relevant to the previous case that a funnel was used in the process. In the first case, the funnel has to be cleansed only in that part which was immersed in the lower vessel; in the second case it has to be cleansed and dried thoroughly from top to bottom.

122 The text is copied from Qiddušin 1:4, Notes 420-429. The first paragraph belongs to the theory of transfer of property; it is irrelevant here. The origin of the second
clearly is in *Qiddušin* since the Mishnah here is quoted as “there”, even though the text here is slightly better. If there is firm intention to buy one could argue that the buyer already agreed to pay no less than the lowest price recorded for a similar product within the last few days. Then it would be irrelevant whether the wine was measured before or after the price was fixed. Since prices are influenced by news, the question could have been dismissed out of hand. Babli 72a.

What means “contaminated with wine”? If it is dirty, as one says, immersed in blood. The expression is uncommon and in the Mishnah in the Babli and the independent Mishnah mss. is replaced by “a remainder”. 125 *Hos.* 6:8.

The following is obvious: If the Jew holds the funnel and the Gentile pours, everybody agrees that is it forbidden. If the Gentile holds the funnel and the Jew pours, Rebbi Assi forbids and Rebbi Immi permits. If the Gentile holds the opening of the wineskin and the Jew pours, Rebbi Jeremiah in the name of Rebbi Ze’ira: this is the disagreement. Rebbi Mana asked before Rebbi Yose, which disagreement? He told him, the disagreement between Rebbi Assi and Rebbi Immi. If the Jew holds the wineskin and the Gentile pours, they wanted to say that according to everybody it is permitted. Rebbi Samuel: In itself it implies that it is forbidden. For sometimes the Jew will loosen his grip and then the entire pouring is done by the Gentile. If somebody lets down a wineskin from top to bottom this is not pouring from vessel to vessel.
126 If the Gentile tilts the Amphora, he moves the wine in it and the entire contents of the amphora become libation wine forbidden for all usufruct. Babli 60a.

127 This is his Babli name; in the Yerushalmi he otherwise appears as R. Yasa. Possibly one also should read the Babylonian Ammi for Galilean Immi.

128 The Gentile keeps the opening of the wineskin in a fixed position; the Jew lifts the skin to pour.

129 And even the wine remaining in the skin is forbidden.

130 It is not too clear what the hapax הגלל (as Palestinian Aramaic verb) means. It is conjectured that it means “to turn upside down”. It is taken here in one of the meanings of Arabic رجل “to lower”. If a sealed kosher wineskin is handled by a Gentile it remains permitted.

Mishnah 11: Libation wine is forbidden and makes forbidden in the most minute amount. Wine mixed with wine or water mixed with water in the most minute amount. Wine in water or water in wine, if it gives taste. This is the principle, kind in the same kind in the most minute amount, kind in another kind if it gives taste.

131 Libation wine mixed with kosher wine.

132 Holy water used for pagan rituals.

133 In the practice of the Babli, if the forbidden substance is less than one sixtieth of the permitted; cf. Terumot Chapter 10.

Halakhah 11: “Libation wine is forbidden,” etc. Hizqiah said, that is at a place where water is not sold by measure. But at a place where water is sold by measure it is like wine in wine.

134 If water is so precious that it is sold bottled, mixing wine and water is mixing two equally important fluids and treated as equals. This rule is not found in the Babli.
The text reads:

HALAKHAH 11

(last it should be forbidden! Rebbi Assi asked, if it were a stringency about libation wine, even if the permitted fell in
follows Rebbi Eliezer, as Rebbi Eliezer said, I am going after the last one
permitted [last] makes it permitted. Rebbi Samuel [bar Rav Isaac] said, this
Ze`ira said, this has been said about the preceding; how can it be? Rebbi
Yose ben Rebbi Abun, Rebbi Abbahu in the name of Rebbi Johanan, if a flask
of libation wine fell into an amphora of (water) and then it fell into a water

135 Hizqiah said, if somebody mixed a cup from forbidden and from permitted [wine], if the forbidden fell in [last] it makes it forbidden, permitted [last] makes it permitted. Rebbi Samuel [bar Rav Isaac] said, this follows Rebbi Eliezer, as Rebbi Eliezer said, I am going after the last one. Rebbi Jeremiah said, this is a stringency about libation wine. Rebbi Yose asked, if it were a stringency about libation wine, even if the permitted fell in last it should be forbidden! Rebbi Assi in the name of Rebbi Johanan: if somebody mixed a cup from forbidden and from permitted [wine], one considers the permitted as nonexistent; if the forbidden does impart taste it is forbidden, otherwise permitted. Rebbi Hoshiaia said, only if the permitted fell in last. Rebbi Immi in the name of Rebbi Johanan, it does not make any difference whether the forbidden fell in first and the permitted last or the permitted first and the forbidden last, even water and wine, even if it was mixed perfectly from permitted, one considers the permitted as nonexistent; if the forbidden does impart taste it is forbidden, otherwise permitted. Rebbi Ze`ira said, this has been said about the preceding; how can it be? Rebbi Yose ben Rebbi Abun, Rebbi Abbahu in the name of Rebbi Johanan, if a flask of libation wine fell into an amphora of (water) and then it fell into a water
cistern, one considers the permitted as nonexistent; if the forbidden does impart taste it is forbidden, otherwise permitted\textsuperscript{140}.

135 From here to the end of the Halakah the text is from \textit{Orlah} 2:7 (ע), Notes 158-174. The text there is superior in the tradition both of text and of names.

136 Added from ע, needed for comprehension.

137 Mishnah \textit{Orlah} 2:10.

138 Babli 73b.

139 In ע “wine” (permitted wine). Only this makes sense; otherwise there would be no need to mention two different vessels.

140 Babli 73a.

So far when they fell in one after the other. What can one say if they fell together? Let us hear from the following\textsuperscript{141}: “When is leavened matter of Samaritans permitted after Passover? Of private persons after three weekly bakings, of city bakers after three days, of rural ones after three baking loads.”

Rebbi Simeon ben Eleazar says, even when they said of private persons after
three weekly bakings, if he was an important personality or he married off his son, if he baked three loads in one week one after the other it is permitted. Even when they said of (rural) [city] bakers after three days, if he was under pressure and baked three loads one after the other, it is permitted. It was stated: Rebbi Simeon says, even when they said of rural bakers after three baking loads, it is forbidden at least three days since in the morning he prepares sourdough for the entire day.” Does the second dough not become sour from forbidden and permitted? And Rebbi Jeremiah said in the name of Rebbi Simeon ben Laqish, who is the Tanna of “the leavened matter of the Samaritans”? Rebbi Eliezer! And Rebbi Yose said to Rebbi Hanina Eyntanaya: Do you remember that you and Rebbi Jeremiah were instructing in the name of Rebbi Simeon ben Laqish, who is the Tanna of “the leavened matter of the Samaritans”? Rebbi Eliezer! But here we do not instruct so but Rebbi Hila in the name of Rebbi Simeon ben Laqish, they treated leavened matter of the Samaritans following Rebbi Eliezer. In addition from the following: Rebbi Hananiah bar Rebbi Abbahu said, my father had a case; he sent to Rebbi Hiiya, and Rebbi Immi, and Rebbi Yasa, and they instructed him following Rebbi Eliezer. How? Would they instruct following an isolated opinion? No, since they treated leavened matter of the Samaritans following Rebbi Eliezer.

Rebbi Mani said before Rebbi Yose: as you are saying there, “practice follows Rebbi Eliezer”, also here practice follows Rebbi Eliezer. He said to him, for everything?

140 Tosephta Pesahim 2:1. One may assume that as long as other Sadducee sects were in existence, the same rules applied to all Sadducees who denied that leavened matter which was owned by a Jew during Passover (but hidden away so that it was not seen, Ex. 13:7) was forbidden in the most minute amount after Passover. A Samaritan/Sadducee did consider the sale of such matter to a Gentile while the matter was seen in the Jew’s house on Passover, as a breach of the biblical commandment.

141 The text in parentheses (identical with that in ‘Orlah) was originally written by the
scribe; the text in brackets is his correction.

142 It is a practice universally accepted (probably by necessity when Sadducees were a viable Jewish sect), not a decision incorporated in a consistent theory of the law.

143 In matters of leavened matter; does this apply to all cases of food prohibited in the most minute amount? The answer is negative.

144 The scribe also wrote יָרָה in ‘Orlah but there corrected to יָרָה. The form יָרָה, Accadie dibbu, should be acknowledged, but it is not clear whether this is learned Hebrew speech or popular Aramaic.

Mishnah 12: The following are forbidden and they forbid in the most minute amount: Libation wine, idols, heart-removed skins, an ox which was stoned, and the calf whose neck was broken, and the birds of the sufferer from skin disease, and the nazir’s hair, and the firstborn donkey, and meat in milk, and profane animals slaughtered in the Temple precinct. These are forbidden and they forbid in the most minute amount.

145 The rule that anything which cannot be tasted in a mixture is irrelevant does not apply to these items. An admixture of one of these even if less than one in a thousand will make everything forbidden.

146 Mishnah 2:3.

147 Which killed a human, Ex. 21:28.


149 For purification of the healed person, Lev. 14:4-6.

150 Which has to be burned, Num. 6:18.

151 Which is not redeemed by a lamb given to a Cohen, Ex. 13:13.


153 It is pointed out in the Halakhah that the biblical text forbids only the slaughter of dedicated animals outside the holy precinct, Lev. 17:4.
Halakhah 12: “The following are forbidden and they forbid in the most minute amount,” etc. Libation wine, idols, heart-removed skins, because nothing of the taboo should cling to your hand\(^{154}\).

An ox which was stoned. From the meaning of what was said, the ox shall be stoned\(^{47}\) would I not know that it cannot be eaten? Why does the verse say, it shall not be eaten? From here that it is forbidden for usufruct\(^{155}\).

And the calf whose neck was broken. There, there. Since there mentioned further describes a prohibition of usufruct, also there said here implies prohibition of usufruct\(^{156}\).

And the birds of the sufferer from skin disease. Any pure bird you may eat\(^{157}\), this is the living bird. But the following you may not eat of them\(^{158}\), that is the slaughtered one\(^{159}\). Or the other way around? Rebbi Johanan in the name of Rebbi Ismael: The Torah has no prohibition of usufruct which applies to any living thing\(^{160}\).

And the nazir’s hair. He shall put it in the fire which is under the well-being offering\(^{150,161}\).

And the firstborn donkey. Breaking the neck, breaking the neck. Since there one buries it and it is forbidden for usufruct, also here one buries it and it is forbidden for usufruct\(^{162}\).

And meat in milk. It was stated: At three places it is written do not cook a kid goat\(^{152}\), about eating, about usufruct, and about cooking\(^{163}\).
And profane animals slaughtered in the Temple precinct. Rebbi Johanan in the name of Rebbi Ismael: The Torah said, slaughter what is Mine in My place and what is yours in yours. Since Mine in yours is forbidden, also yours in Mine. Is it punished by extirpation? Does not Rebbi Ismael say, one infers by an argument de minore ad majus but one does not punish by an argument de minore ad majus?


155 This is a very short reference to a text in 'Orlah 3:1 (Notes 26-28, Pesahim 2:1 28c), which is part of a lengthy discussion under which conditions a prohibition as food implies a prohibition of usufruct ('Orlah 3:1, Notes 10-44; Pesahim 2:1; Babli Pesahim 21b, Qiddusin 56b, Bava gamma 41a, Hulin 114b) Since the mention of the prohibition as food is unnecessary, the ox qualifies as a case where the prohibition as food means prohibition of usufruct. In the Babylonian sources (Bava gamma 41a, Mekhilta dR. Ismael Miśpatim 10) it is agreed that it is obvious that a stoned animal was not ritually slaughtered and therefore is forbidden as meat but it is noted that the prohibition as food is necessary anyhow to show that if the ox was ritually slaughtered after conviction by the court, the slaughter is ineffective and does not permit the carcass to be eaten. Everybody agrees that if the ox was correctly slaughtered before a trial could be held the meat is kosher. The Babli has to find the prohibition of usufruct in another part of the verse which makes the prohibition one of rabbinic interpretation rather than biblical.

Louis Ginzberg in his Yerushalmi Fragments from the Genizah (New York 1909) p. 280 has published a leaf of selections from the entire tractate. The passage referring to the paragraph under discussion reads there (vocalization added):

_and an ox which was stoned. The ox should certainly be stoned. From the meaning of what was said, shall certainly be stoned would we not know that it cannot be eaten? Why does the verse say, it shall not be eaten? But that it is forbidden for eating and forbidden for usufruct. Rebbi Abba[hu] in the name of Rebbi Johanan: Any place where it says shall not be eaten, you shall not eat [it is forbidden for eating and forbidden for usufruct.]

The addition to the text is from 'Orlah 3:1 (Note 10) or Pesahim 2:1 l. 15. In these and all Babli sources (quoted above) the statement is attributed to R. Eleazar, not R. Johanan (R. Eleazar’s teacher). The addition has to be considered a commentary. 156 Babli 29b, Sifry Deut. 207. This is a case of equal cut. It is written in Deut. 21:4,
and they shall break the calf’s neck there in the wadi. Also it is written in Num.20:1, there Miriam died and was buried there. Since a grave and all its appurtenances are forbidden for usufruct, and since the mention of there in Deut. 21:4 is not logically necessary, the prohibition of usufruct (and, as noted in the Babylonian sources, the obligation of burial) is transferred to the calf.

157 Deut. 14:11.
158 Deut. 14:12.
159 Sifry Deut. 103, Babli Qiddušin 57a, Hulin 82a. Since first it is said, any pure bird you may eat, which is immediately followed by but the following you may not eat of them, this implies that not only may one not eat the impure birds listed later but also some pure birds. Of the two pure birds used for the purification ceremony of the healed sufferer from skin disease, one is slaughtered (Lev. 14:5). The other is released (v. 7); since it is nor recognizable it cannot be forbidden to anybody who might catch it. Therefore the slaughtered bird must be the one pure bird which was correctly slaughtered and nevertheless is forbidden as food. The parallel sources also presuppose that the remains of the slaughtered bird, after its blood has been used, is forbidden for usufruct but no explicit reason for that is given. One must assume that this is one of the cases where a prohibition as food implies prohibition of usufruct (cf. Note 155).

160 Babli Qiddušin 57a, opposed there by R. Simeon ben Laqish.
161 Using the hair as fuel is a kind of usufruct; since it is a positive commandment to burn the hair in this way, any other use is forbidden (but not sanctionable).

162 Babli Bekhorot 9b, Mekhilta dR. Ismael Bo 18, dR. Simeon bar Iohai 13:13 (l. 25). This is heqqēš rather than “equal cut”. Since the only other case where the neck of a four-legged animal has to be broken is the atonement for an unsolved murder case, the rules of the latter have to be applied to the case where a rancher refuses to redeem the first born of his donkey. Since the rule has moral justification in the parallel sources, “he refused to give value to the Cohen; therefore value has to be denied him”, the rule has to be considered rabbinic rather than biblical.

163 Babli Hulin 115b, Qiddušin 57b; Mekhilta dR. Ismael Mišpatim 20 (opposed by Mekhilta dR. Simeon ben Iohai 23:19, Sifry Re’e h104).
164 Babli Qiddušin 57b where the argument if found unconvincing and other proofs are given.
165 Cf. Yebamot 11:1 Note 50. There is no argument de minore ad majus involved here; more appropriate is the language of the Babli (Sanhedrin 54a, Makkot 5b,14a,17a): One does not punish by a logical argument (only by an explicit verse). One cannot object that extirpation anyhow is a matter for the Heavenly Court not bound by human arguments since offenses punishable by extirpation automatically are punishable by flogging by the human court. The exclusion of extirpation implies removal of the offense from human criminal justice.
Why did we not state carcasses with them\textsuperscript{166}\textsuperscript{166}\textsuperscript{166}\textsuperscript{166}? Rebbi Yose ben Rebbi Abun said, it did state only things forbidden for usufruct. Carcass meat is permitted for usufruct\textsuperscript{167}. They objected, is there not leavened matter on Passover\textsuperscript{168}? Leavened matter makes liable to extirpation\textsuperscript{169}, but for these\textsuperscript{170} there is no extirpation.

\textsuperscript{166} Carcass meat as meat forbids only if it can be tasted, i.e., if it is more than $\frac{1}{60}$ in a mixture. Therefore the question must be about entire carcasses which usually are sold by the piece; nothing usually sold by the piece can become insignificant (\textsuperscript{45b} line 19).\textsuperscript{45b line 19}

\textsuperscript{167} Deut. 14:21.

\textsuperscript{168} Here again one only considers loaves of bread which exclusively are sold by the piece and therefore cannot become insignificant.

\textsuperscript{169} Ex. 12:15 (but only for eating, not for possession.

\textsuperscript{170} The prohibited items enumerated in the Mishnah.

Rebbi Yose asked in the name of Rebbi Hanina: May prohibitions of usufruct become insignificant in (combination) [by being shredded]\textsuperscript{171}? But did we not state “the ox which was stoned”? Explain it in pieces\textsuperscript{172}. But did we not state “the birds of the sufferer from skin disease”? Explain it as a bird among birds\textsuperscript{173}. But did we not state “the nazir’s hair”? Can you say a bird among birds\textsuperscript{174}? When they came to study \textsuperscript{45b} line 19 did Rebbi Jacob object before Rebbi Yose, did we not state “if somebody weaves the length of a sīt of firstling’s wool, the cloth must be burned. Of nazir’s hair or firstling donkey in sackcloth, the sackcloth must be burned.” He told him, (if the Tanna had said before us, you would have given)\textsuperscript{176} correctly.
171 The text in parentheses is the original text written by the scribe, printed in the *editio princeps* and the editions based on the latter. The text in brackets is a correction by the scribe himself.

In both cases the question is whether prohibitions of usufruct automatically imply the impossibility of disregarding minute amounts or whether the prohibition will be void if either the prohibited item is mixed with sufficiently many permitted items and is no longer recognizable or whether it reverts to the usual test of giving taste if shredded and mixed with others.

172 The question is legitimate for meat from such an ox. This question then reads סירף.

173 A slaughtered small bird among many of the same kind. Here one has to read מירף.

174 This is the one genuine question since hair is not sold by the unit; therefore the rabbinic prohibition of usufruct for admixtures of forbidden things sold by the piece (Note 166) does not apply. Here also the prohibition of usufruct is secondary; the question can arise only if the positive commandment of burning the hair in the fire cooking the well-being offering has not been followed.

175 Mishnah ‘Orlah 3:3. Since a minimum length of a sit (‘Orlah 3:3 Note 82) is required, it is obvious that the prohibition of the nazir’s hair does not apply to minute amounts.

176 The text as written here can be translated word for word but does not make any sense. It is a corruption of a text in ‘Orlah 3:3 (Note 94): אַלּוֹ אֶאֱכָלַת מַעַן אֲיִית. If you had objected there you would have been correct, i. e., if when I asked the question in *Avodah zarah* about prohibitions of usufruct becoming insignificant you pointed out the Mishnah in ‘Orlah it would have been relevant.

Mishnah 13: If libation wine fell into a cistern, the entire cistern is forbidden for usufruct. Rabban Simeon ben Gamliel said, all of it shall be sold to a Gentile except for the value of libation wine contained in it.

177 If the wine is sold by volume, the Gentile shall not be required to pay for the volume of libation wine contained in the cistern. Libation wine cannot become insignificant; there is no volume of the cistern which would make the wine kosher to drink. According to Rabban Simeon ben Gamliel the prohibition of usufruct does not extend to the mixture.
Halakhah 13: “If libation wine fell into a cistern,” etc. Rebbi Yose, Rebbi Johanan in the name of ben Bathya: If libation wine fell into a cistern, all of it shall be sold to a Gentile except for the value of libation wine. Rebbi Samuel bar Nathan in the name of Rebbi Hama: practice follows Rabban Simeon ben Gamliel. Rebbi Yasa said, one of the rabbis came out from the house of assembly and said, Rebbi Johanan and Rebbi Simeon ben Laqish disagree. One said, practice follows Rabban Simeon ben Gamliel, and one said, practice does not follow Rabban Simeon ben Gamliel, but Rabban Simeon ben Gamliel agrees that as wine for cooking it is forbidden. Rebbi Bun in the name of Rav: The Sages agree with Rabban Simeon ben Gamliel if it was an amphora among amphoras that all of it shall be sold to a Gentile except for the value of libation wine. Rebbi Ze’ira said before Rebbi Immi: Before this was said did we not know that it was so? Was it said that the Sages agree with Rabban Simeon ben Gamliel, or perhaps was only said that Rabban Gamliel agrees with the Sages? Rebbi Yudan said, Rebbi Ze’ira knew that it was so, but he is like a person who hears something and objects to it.

178 The lenient ruling of Rabban Simeon ben Gamliel is a traditional Babylonian one. 179 In the Babli, 74a, this is a ruling of the prestigious Rav Nahman. Here it is quoted in the name of obscure authorities because it is not unquestionable. 180 As explained in Note 177, even for Rabban Simeon ben Gamliel libation wine remains forbidden even in the most minute amount; it is only that the mixture does not entirely become forbidden for all usufruct. 181 This is Rav’s interpretation of Rabban Simeon ben Gamliel’s ruling in the Babli
74a. If an amphora in a storage facility with at least two other amphoras was contaminated with libation wine and it can no longer be identified, all amphoras can be sold to Gentiles since for each single one the probability that it was the forbidden one is less than 50% which makes the sale acceptable by biblical standards.

182 That even a person rejecting the opinion of Rabban Simeon ben Gamliel could agree with the ruling.

183 He does not question that practice follows Rabban Simeon ben Gamliel in all cases, also of a single cistern or a single amphora, following Samuel in the Babli.

Miashnah 14: A wine press of stone which a Gentile had pitched one has to wipe dry\textsuperscript{184} and it is pure. But one of wood, Rebbi said he shall wipe it dry but the Sages say he must remove the pitch\textsuperscript{185}. And one of pottery, even if he removed the pitch, remains forbidden\textsuperscript{186}.

184 If the wine press is hewn into the local limestone, the walls of the vat under the press into which the pressed juice flows have to be made impermeable. If this is done by sealing with pitch, something has to be done that the pitch does not spoil the wine. The usual way of neutralizing the pitch was to wash it down with wine. The Yerushalmi does not specify how the wiping dry has to be done, probably because it was generally known, but the Halakhah implies that first everything has to be washed down with water for an extended period. The Babli specifies that in washing down an abrasive powder has to be used.

185 Since wood is more absorbent than stone, a new insulation has to be applied.

186 Pottery absorbs the wine; the walls of the vat become forbidden and cannot be repaired (except by standing empty for 12 months, by which time all organic material will have decomposed.)

\textsuperscript{184} This phrase is not clearly understood.

\textsuperscript{185} Especially since wood is more absorbent than stone.

\textsuperscript{186} Pottery absorbs the wine; the walls of the vat become forbidden and cannot be repaired (except by standing empty for 12 months, by which time all organic material will have decomposed.)
Halakhah 14: “A wine press of stone which a Gentile had pitched,” etc. Our Mishnah is Rebbi’s. “One of wood, Rebbi said he shall wipe it dry but the Sages say he must remove the pitch.” For pottery it is not following Rebbi, as it was stated: A Gentile’s wine-press, bucket, and funnel, Rebbi permits but the Sages forbid. Rebbi agrees that pitchers are forbidden. Why are these forbidden and those permitted? These one fills with it, the others one does not fill with it. Rebbi Yose in the name of Rebbi Johanan: practice follows Rebbi. If a Gentile pitched a papyrus vessel. Rebbi Yose ben Rebbi Abun in the name of Samuel, practice follows Rebbi. It is the disagreement of Rebbi and the Sages, as we have stated: “If somebody’s wine-press was impure and he wants to purify it, the brooms, the planks, and the lentil one rubs dry and they are pure. The wicker-work of wood splinters, or of hemp, or of wood, or of bark, of threads, of bast, one lets age a full twelve months; Rabban Simeon ben Gamliel said, from one olive pressing to the next, from one wine pressing to the next. Rabban Simeon ben Gamliel said, if he wants to purify it immediately, he puts it for a period in a pipe where water streams, or in a brook whose water flows. Just as one wipes dry for purity so one wipes dry for libation wine.” How much is a period? Rebbi Yose in the name of Rebbi Johanan, half a day or half a night. Rebbi Hiyya stated, either a day or a night. Do they disagree? But one when day and night are equal, the other when day and night are unequal.

187 Babli 74b. A comparison with the text of the Babli shows that the text here is elliptic. It must read: The Mishnah follows Rebbi for stone and wood vessels, but does not follow Rebbi for pottery.

188 It is obvious that for it has to read “forbid”. What Rebbi permits and the Sages forbid is cleansing the earthenware vessels by wiping them dry.

189 The text of the Babli is more explicit: In pitchers wine is stored, in other vessels it is filled only temporarily.
190 The Babli does not discuss which opinion to follow but, since at other places it states the rule that practice follows Rebbi only if his opinion is opposed by a single dissenter, not against a majority opinion, the codifiers of Talmudic law follow the Sages in this matter.

191 Not paper cups but wicker work made with papyrus rope or stems; cf. Kilaim 6:3 Note 38. The discussion is interrupted by the next sentence; it continues with “is the disagreement . . .”

192 There is Babylonian authority for following Rebbi; cf. Note 190.

193 Tosephta 8:3, Babli 75a.

194 Nothing connected to the ground can be impure except a leprous house. One speaks here of the movable parts and the implements belonging to a wine-press which in a standard sale contract would be sold with the building.

195 Any ovaloid implement is called “lentil”; this may be a vessel (a hot water bottle, Tosephta Šabbat 3:7) or a roller.

196 If one has to wait a full 12 months one loses the use of the press for one full harvest.

197 In the Babylonian sources, Babli and Tosephta: Rabban Simeon ben Gamliel in the name of R. Yose.

198 Even though one uses the expression “to make the wine in purity” as equivalent to “making kosher wine” (Halakhah 4:12), here one speaks of purity in the exact biblical meaning.

199 Babli 75a, Pesahim 113b, Yebamot 62b, Ševuot 18b, Niddah 63b. Either day or night at the equinox or half a day during the summer solstice, half a night during the winter solstice.

Mishnah 15: If somebody buys crockery from a Gentile, what usually is immersed one immerses, cleansed in boiling water one cleanses in boiling water, making glowing white in fire one makes glowing white. The spit and the grill one makes glowing white in fire but a knife one rubs clean and it is pure.

200 Any vessels and utensils used for the preparation or serving of food.
201 The basic source is Num. 31:21-23. If the item has not been used for non-kosher food and is of metal, it is immersed in water.
202 The rules for cleansing vessels from non-kosher food are identical with those for cleansing kosher vessels from leavened matter for Passover and discussed in Tractate Pesahim. As a general principle, what was used only cold simply has to be cleansed, what was used with hot fluids must be cleansed with boiling water, and what was used in the fire must be exposed to
fire.

203 Greek ἰσχάρα, with change of the liquid.

204 As explained in the Halakhah, one pushes it three times into hard soil. This should eliminate all fat particles clinging to the knife.

Halakhah 15: “If somebody buys crockery from a Gentile,” etc. “

205 If somebody buys crockery from a Gentile, something of which he knows that it is used for human food, he washes them clean and they are pure. But pots and boiling kettles one cleanses in boiling water. All of these, if he used them even if he did not immerse them, or cleansed them in boiling water, or rubbed them clean, or made them glowing white in fire, they are pure.” Rebbi Hoshiaia said, one has to immerse them, as by the following. Rebbi Immi and Rebbi Jehudah the Prince went down to the hot springs of Gadara and borrowed silverware from the family Osinos. They asked Rebbi Jeremiah who said, one must immerse them because they left the impurity of Gentiles and entered the holiness of Israel. He went out and we want to learn.

They left and heard Rebbi Jacob bar Aba, Simeon bar Abba in the name of Rebbi Johanan: they said only “who buys”, but the borrower is permitted.

Then even vessels. Rebbi Hoshiaia bought vessels and immersed them.

Here you say, one washes them clean and they are pure. But there you say, one cleanses them in boiling water. One is more stringent with the abominations of Gentiles.
A knife one sticks into the ground three times and it is enough\textsuperscript{216}. Rebbi Abba in the name of Rav Jehudah: That is for a small knife. But a large knife needs to become white hot, and in its being white hot it is necessary that sparks fly from it\textsuperscript{217}.

205 Babli 75b, Tosephta 8:2. In these texts, the formulation is much more clear. If a vessel is new, one simply immerses it. If it was used cold like cups, one washes them clean. If it was used hot or for cooking, it has to be cleansed by boiling water.
206 Latin \textit{cucuma}.
207 One has to immerse any vessel bought from a Gentile to convert it to a Jewish vessel. In the Babli (Note 205) this is one version of the preceding \textit{baraita}; another version denies the obligation.
208 The place were calendar computations and proclamations were held and all leading scholars of the time came together. The names of persons involved here are probably corrupt. R. Immi cannot ask for instruction from R. Jeremiah, the student of his colleagues R. Yasa’s student R. Ze’ira.
209 From the context it appears that these were Gentiles.
210 This opinion is not found in any other source.
211 While the meaning of the sentence is clear, the text is corrupt and cannot be vocalized to make sense as it stands. The people who asked R. Jeremiah did not accept his ruling, they decided to look around for other opinions. Possibly then the sentence was \textit{כִּנָּה לְכָּלָיִם} “let us go out and study.”
212 In the Babli, \textit{loc. cit.}, a statement of R. Nahman (bar Jacob).
214 As a matter of practice, not theoretical obligation.
215 It is difficult to make sense of this passage. Most probably the explanation of \textit{Pene Moshe} is correct that the Mishnah here requires that spit and grill be cleansed in fire whereas in Mishnah \textit{Zevahim} 11:7 it is only required that spit and grill used in the Temple be cleaned by boiling water. The answer is that while the cleansing of the utensils in the Temple is a biblical requirement (\textit{Lev.} 6:21) the rabbinic requirement of cleansing from forbidden cooking follows rules that are more strict.
216 In the Babli, 76b, ten times in hard ground, and only for a knife without depressions.
217 The Babli, \textit{loc. cit.}, makes a difference between a knife used for cold food which can be cleansed in the ground and one used hot which needs cleansing in boiling water.
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