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## The Structure of the Talmud

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In addition to the written scriptures there is an "Oral Torah," a tradition explaining what the scriptures mean, how to interpret them, and how to apply the Laws. Orthodox Jews believe God taught the Oral Torah to Moses, and Moses taught it to others, and so on, down to the present day. This tradition was maintained in oral form until about the 2nd century AD, when the oral law was compiled and written down in a document called the **Mishnah**.

Over the next few centuries, additional commentaries elaborating on the Mishnah were written down in Jerusalem and Babylon. These additional commentaries are known as the **Gemara**. The Gemara and the Mishnah together are known as the **Talmud**. This was completed in the 5th century AD.

There are two Talmuds: the Jerusalem Talmud and the Babylonian Talmud. The Babylonian is more comprehensive, and is the one most people mean when they refer to The Talmud. There have been additional commentaries on the Talmud by such noted Jewish scholars as Rashi and Rambam.

The Mishnah is divided into six sections called **sedarim** (in English, orders). Each seder contains one or more divisions called **masekhtot** (in English, tractates). There are 63 masekhtot in the Mishnah.

The rabbis of the 2<sup>nd</sup> and 3<sup>rd</sup> centuries after Christ organized the Talmud in the form we find it today. Rabbi Jehudah the Nasi (3<sup>rd</sup> Century, president of the Sanhedrin) began the work of gathering together all the notes, archives, and records from which the Talmud would be compiled. The scholars in Spain asserted that these notes had been in existence since schools had begun in Israel, possibly from as early as Ezra's time.

Other Jewish scholars of that period, notably those living in France, declared that not a line was written down anywhere until this compilation

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began, and that the writing was done from memory alone, the memory of the living rabbis who were the contributors.

Modern scholars have compromised between these two versions of how things happened, by asserting that, during the first centuries, the commentators of the Talmud had taken notes of their studies, then later had written them out in permanent form.

It was severe persecution that was the strong motivation to write things down. The very lives of the scholars were threatened continuously in some periods, and the thought of important bodies of thought perishing with one or two individuals was a catalyst that led to written transcripts.

At a certain point, probably during the 2<sup>nd</sup> century after Christ, the Pharisees gave permission for writing the law. Until then it was absolutely forbidden to put the oral law in writing. No sooner had this been granted that the number of manuscripts began to be very great, and when Rabbi Jehudah had been confirmed in authority (since he enjoyed the friendship of a Roman named Antonius, who was in power in Rome), he discovered that “from the multitude of the trees the forest could not be seen.”

The period of the 3<sup>rd</sup> century was very favorable for this undertaking, because the Talmud, and its Jewish followers, enjoyed a rest from persecutors. But there were still sharp differences of opinion among the students of the Talmud themselves.

Although Rabban Gamaliel the Elder (the Gamaliel of the New Testament) had succeeded in fixing the Law in accordance with Hillel’s school, and had declared, with the consent of many of the most prestigious sages of the Talmud, that the school of Schammai was of no validity, when it differed from Hillel, there were more than 400 students in his college alone. So it was decided the individual opinions, even those of the minority, should be considered; and differences between schools of thought were renewed with considerable vigor. Thus, when Rabbi Jehudah began his compilation, he was compelled to give due weight to all the varying opinions.

Another difficulty was in selecting from the mass of doctrines, laws, and commentaries those which were practicable and of direct application. One Rabbi’s account states that there were more than 600 sections of Mishnah, and even if this is an

exaggeration, it was no easy task to reduce them to six.

## The Sections and Tracts of the Talmud

The subjects (Orders: *sedarim*) of the sections and the tracts of the Talmud are as follows:

### Seder Zeraim (Seeds)

This section (11 tractates, 74 chapters) contains the law relating to agriculture and crops, heave offerings, tithes, the sabbatical year, and gifts to the poor. At the head of this section is the tract on benedictions, which man owes to his Maker every day, beginning with those of the evening, which commences the day, according to Jewish custom.

Tract **Berakhot** – prayers and benedictions

Tract **Pe’ah** – laws of gleanings and charity

Tract **Demai** – doubtfully tithed produce

Tract **Kilayim** – various kinds of seeds, trees, and animals

Tract **Shevi’it** – laws of the sabbatical year

Tract **Terumot** – contributions to the priests

Tract **Ma’aserot** – tithes for the Levites and poor

Tract **Ma’aser Sheni** – the second tithe, and bringing it to Jerusalem

Tract **Halah** – the dough offering to the priests

Tract **Orlah** – prohibition against harvesting trees for four years

Tract **Bikurin** – offering of the first fruits at the Temple.

### Seder Moed (Festivals)

This section (12 tractates, 86 chapters) deals with Sabbath holidays, the duty of taxes before the holidays, and of mourning during the festivals.

Tract **Sabbath** – Sabbath laws

Tract **Erubin** – laws of permissible limits on the Sabbath.

Tract **Pesahim** – laws of hametz and matzah and the paschal sacrifice.

Tract **Shekalim** – the shekel dues to the Temple and Temple ceremonies

Tract **Yoma** – sacrifices and the fast on Yom Kippur

Tract **Sukkah** – the building of a sukkah; the four species; the festival in the Temple.

- Tract **Betza** – general festival laws  
 Tract **Rosh Hashanah** – fixing the months and years; blowing the *shofar*; and the Rosh Hashanah prayers.  
 Tract **Taanit** – the regular fast days.  
 Tract **Megillah** – laws of Purim.  
 Tract **Moed Katan** – laws of the intermediate festival days  
 Tract **Hagigah** – Laws for pilgrimage festivals

### Seder Nashim (Women)

This section (7 tractates, 71 chapters) deals with laws regarding women, marriage, and divorce. There also laws on vows and Nazarites, because women's vows are dependent on the decision of their fathers and husbands; and Nazarites depend on women, who may legally consecrate a child previous to its birth, as for example, Hannah, the mother of Samuel, and the mother of Samson.

- Tract **Yebamot** – Levirate marriage; prohibitions on marriage; testimony on the death of the husband.  
 Tract **Ketubot** – the marriage contract and special agreements  
 Tract **Nedarim** – various types of vows.  
 Tract **Nazir** – the Nazarite laws  
 Tract **Sotah** – laws concerning an adulteress; murder in which the perpetrator is unknown; war  
 Tract **Gittin** – divorce; writing and sending the *get*.  
 Tract **Kiddushin** – the marriage act; laws of genealogy

### Seder Nezikin (Damages)

This section (10 tractates, 73 chapters) is also known as **Yeshuot** (Rescues), since a lot of it deals with saving a victim from his persecutor. It deals with laws of property, judges, penalties which courts may prescribe. A section of the religious criminal code (**Avodah Zarah**) is devoted to the prohibition of pagan worship. Another tractate, **Horayot** (Decisions), deals with the problem of what to do in case the Sanhedrin makes an erroneous decision that plunges the whole nation into error. The tractate **Avot** (Fathers) deals with ethics and philosophy and contains the sayings and aphorisms of sages of the Mishnah. Because of this unique content, this

tractate was included in many prayer books and was translated into other languages.

- Tract **Baba Kama** (First Gate) – direct and indirect damages.  
 Tract **Baba Metzia** (Middle Gate) – losses, loans, work, and wage contracts.  
 Tract **Baba Batra** (Final Gate) – partnership, sales, promissory notes, inheritance  
 Tract **Sanhedrin** – various types of courts, criminal law, principles of faith  
 Tract **Makot** – punishment by flagellation  
 Tract **Shevuot** – oaths  
 Tract **Eduyot** – a collection of testimonies on various subjects  
 Tract **Avodah Zarah** – Keeping one's distance from idolatry and idolaters.  
 Tract **Avot** – ethics and *derekh eretz*.  
 Tract **Horayot** – erroneous rulings of the courts and their rectification

### Seder Kodashim (Holy Things)

- This section (11 tractates, 90 chapters) is devoted mainly to laws pertaining to the Temple and its sacrifices, and includes laws of ritual slaughter and details about kosher and non-kosher foods.  
 Tract **Zevashim** – laws of sacrifice  
 Tract **Menahot** – meal offerings, *tzitzit*, *tefilin*  
 Tract **Hulin** – laws of ritual slaughter and dietary laws  
 Tract **Behkorot** – the first-born child and animal; defective animals  
 Tract **Arakhin** – valuation of Temple offerings and soil  
 Tract **Temurah** – substituting an animal offering  
 Tract **Keritot** – sins requiring extirpation and sacrifices for them  
 Tract **Me'ilah** – sins of sacrilege against Temple property and atonement for them  
 Tract **Tamid** – Daily sacrifices in the Temple  
 Tract **Midot** – measurements of the Temple  
 Tract **Kinim** – what to do when various sacrifices have been mixed

### Seder Toharot (Purity)

This section (12 tractates, 126 chapters) includes the most complex and involved legal subjects, the

laws of ritual purity and impurity. These laws, which were observed mainly in the period of the Temple, and for several subsequent generations in Palestine, consist of minute and extremely involved details based on ancient traditions, in which the logical connection is not always discernible. One tractate, **Nidah**, the only one which appears in either the Jerusalem or Babylonian Talmud, has practical significance in that it discusses laws on the periodic ritual uncleanness of women.

Tract **Kelim** – various types of utensils and their sensitivity to pollution

Tract **Oholot** – laws of the uncleanness of the dead

Tract **Negaim** – laws regarding leprosy

Tract **Parah** – preparation of the ashes of the red heifer and purification after contact with the dead

Tract **Tohorot** – various laws of purification

Tract **Mikvaot** – laws of the *mikvaot* for purification

Tract **Nidah** – ritual impurity of the woman

Tract **Makhshirin** – ways in which foods become ritually unclean

Tract **Zavim** – gonorrhea and purification from it

Tract **Tevil Yom** – discussion of various kinds of ritual uncleanness

Tract **Yadaim** – ritual uncleanness of the hands

Tract **Uktzkin** – categorization of things that are susceptible to ritual uncleanness.

## Tractate Berakhot <sup>1</sup>

As noted in the following outline, tractate Berakhot expounds the liturgical obligations of the Israelite, particularly the recitation of the creed, the Shema' ("Hear, Israel, the Lord our God, the Lord is one") morning and evening, and the Prayer (the benedictions of supplication) morning, afternoon, and evening as noted in the first two sections of the outline. It proceeds to the

<sup>1</sup> The following descriptions of the Tractates in the Babylonian Talmud are taken from the translation and commentary on the Babylonian Talmud, by Jacob Nuesner.

requirement to recite blessings before and after eating in the third section, and the protocol for saying grace at public or communal meetings in the fourth. It concludes in the fifth section with blessings recited for exceptional occasions.

### I. The declaration of the creed (Shema')

A. Reciting the Shema', evening and morning

B. The attitude and the manner in which one recites the Shema'; to carry out one's obligation to do so

C. Those exempt from the obligation to recite the Shema' and certain other obligatory prayers

### II. Reciting the prayer

A. Reciting the prayer morning and evening

B. The correct attitude for reciting the prayer

C. Inclusion of prayers for special occasions in the recitation of the prayer

D. Inclusion of votive prayers in the recitation of the prayer; errors in the recitation of the prayer

### III. Blessings recited on the occasion of enjoying the benefits of creation

A. The requirement to recite blessings

B. Appropriate blessings for various edibles

### IV. Communal meals and their protocol

A. Establishing the communal character of a meal; private and public gatherings and the recitation of blessings

B. Declaring a quorum for the recitation of grace; special problems

C. Special problems debated by the houses of Shammai and Hillel in regard to the protocol of blessings at table; the normative law

### V. Blessings on exceptional occasions

A. Blessings for evil as much as for good

B. Blessings in commemoration of miracles or other exceptional events

C. Prayers and protocol in connection with entering a given location; a town, the Temple in Jerusalem

The law of Berakhot bears no direct connection to the written Torah (Scripture), though it cites or systemically encompasses passages thereof, e.g., the Shema' itself is found in Deut. 6: 4–9. The

order of topics is simple and logical, following the natural sequence of the day and the sequence from formal worship, to conduct in connection with eating, to other occasions of worship. We have, then, a handbook of practical piety. The sequence within each section moves from general to particular, from rules of broad applicability to special cases. Two theological principles govern. First, God takes a constant and intense interest in the condition of Israelite attitudes and opinions. He cares that Israel affirm his unity and declare his dominion through the recitation of the Shema<sup>4</sup> and related acts of prayer. What is important is that when the correct words are spoken, they are spoken with the attitude of acknowledging God's dominion as an explicit act of accepting the government of heaven and the discipline ("yoke") of the commandments. That is what is meant in the laws covering reciting the blessings, for instance, "Blessed are you... who..." or "Blessed are you, who has sanctified us by his commandments and commanded us to..." . God values these words of acknowledgement and thanks.

Second, through the life of prayer and fulfillment of commandments, Israel wraps itself before God in a cloak made up of the fabric of actions that sanctify—thread by thread.

From Israel's perspective, all Israel and individual Israelites conduct life under the perpetual rule of that just and merciful God who made the world, and that his rule is personal, immediate, and penetrating. In the morning the Israelite accepts God's dominion in an act of personal submission, and then explicitly undertakes to carry out God's commandments, in all their concrete specificity.

### Tractate Shabbat

Tractate Shabbat deals with the Sabbath, with special attention given to the definition of Sabbath repose, preparing for the Sabbath, and acts of labor not to be carried out on the Sabbath.

#### I. Dimensions: space, time, and the Sabbath

- A. Space
- B. Time

#### II. Preparing for the Sabbath: light, food, and clothing for the Sabbath

- A. The Sabbath lamp
- B. Food for the Sabbath

- C. Ornaments for animals, clothing for persons

#### III. Prohibited acts of labor on the Sabbath: not transporting objects from one domain to another

- A. The generative categories of prohibited acts of labor
- B. Domains and the prohibition of transporting objects from one domain to another
- C. The prohibition of carrying on the Sabbath across the lines of domains
- D. Throwing objects from one domain to another

#### IV. Prohibited acts of labor

- A. What constitutes a whole act of labor
- B. Healing on the Sabbath
- C. Knot-tying, clothing, and beds

#### V. Actions that are permitted on the Sabbath

- A. Saving objects from a fire on the Sabbath
- B. Handling objects on the Sabbath in private domain

#### C. Circumcision on the Sabbath

#### D. Preparing food for man and beast

#### E. Seemly and unseemly behavior on the Sabbath

The Israelite household at rest recapitulates the celebration of God at the moment of the conclusion and perfection of creation, at the end of the sixth day of creation and sunset on the eve of the seventh day. Then the Israelite household, like creation at sunset marking the end of the sixth day of creation, is sanctified: separated from the profane world and distinguished as God's domain. With all things in place and in order, at the sunset that marks the advent of the seventh day, the rest that celebrates the perfection of creation descends. The sanctification takes place through that very act of perfect repose that recapitulates the one celebrated at the climax of creation. Like God at the celebration of creation, now man achieves perfect, appropriate rest. That takes place when time and circumstance, but space, too, come together. The advent of the Sabbath marks the time; the household, the space; and the conduct of home and family life, the circumstance.

The Sabbath marks the celebration of creation's perfection (Gen. 2: 1–3). Food for the day is to be prepared in advance (Exo. 16:22–26, 29–30). Fire is not to be kindled on that day, thus there is to be

no cooking (Exo. 35: 2–3). Servile labor is not to be performed on that day by the householder and his dependents, including his chattel (Exo. 20: 8–11; 23:12; 31:12-17; 34:21). The where matters as much as the when and the how. People are supposed to stay in their place: “Let each person remain in place, let no one leave his place on the seventh day” (Exo. 16:29), understanding by place the private domain of the household (subject to further clarification in due course).

At issue in Sabbath rest is not ceasing from labor but ceasing from labor of a very particular character, that is, the labor which imitates God’s work in making the world.

Why are the issues of space, time, and activity important? Given the division of space into public domain, where nothing much can happen, and the private domain of the household, where nearly everything dealt with in the law at hand takes place, we realize that the Sabbath forms an occasion of the household. There man takes up repose, leaving off the tools required to make the world and ceasing to perform the acts that sustain the world.

### Tractate Erubin

The Torah at Exo. 16:29 defines the Sabbath in part by sending Israel to its tents on that occasion. Repose involves entry into a stationary condition. The Israelites are to stay in their place on the Sabbath day. Each person has a place, defined as four [square] cubits (enough for a burial plot), and may move from that place for the distance of two thousand cubits in any direction.

The law in ‘Erubin focuses on the verses, Exo. 16:29–30, that link the act of eating with the locus of residence: “See! The Lord has given you the Sabbath, therefore on the sixth day he gives you bread for two days; remain every man of you in his place; let no man go out of his place on the seventh day. So the people rested on the seventh day.” The juxtaposition of a double supply of bread for Friday and Saturday in addition to the admonition to remain in one’s place leaves no doubt that (1) one stays home, on the one hand, and that (2) home is where one eats, on the other. Here is the topical outline of the tractate.

#### I. The delineation of a limited domain

- A. Forming an alleyway into a single domain

- B. Forming an area occupied by a caravan into a single domain for the Sabbath

#### C. A well in public domain

#### II. The ‘erub and the Sabbath-limit of a town

- A. The ‘erub: A symbolic meal for establishing joint ownership of a courtyard or for establishing symbolic residence for purposes of travel on the Sabbath
- B. The ‘erub and violating the Sabbath-limit
- C. Defining the Sabbath-limit of a town

#### III. The ‘erub and commingling ownership of a courtyard or an alleyway

- A. The ‘erub and the courtyard
- B. Areas that may be deemed either distinct from one another or as a commingled domain so that the residents have the choice of preparing a joint ‘erub or two separate ones
- C. The shittuf and the alleyway
- D. Neglecting the ‘erub for a courtyard
- E. An ‘erub for more than one courtyard
- F. The ‘erub and the area of roofs

#### IV. Public domain in general

The tractate addresses the problems: How can Israelites on the Sabbath move about from one private domain to another? How can the community so arrange matters that shared and common ownership of private domain secures for all parties the right to carry within the space held in common?

One answer is for the community to prepare a symbolic, or fictive, meal, a meal that commingles ownership of property, because where one eats, there one resides. By sharing property among all the partners in the meal, the right to said meal and property is shared by all. All householders thereby commingle their property rights, so that joint property will then form a single common estate from the various private domains.

Another answer is to establish a boundary around the entire set of private domains, one that, like a wall, forms of them all a single property. The medium by which the one or the other procedure is carried out is called an ‘erub, a medium of commingling, thus referring either to the symbolic, shared meal or to the equally fictive demarcation line, as the case requires: a meal of commingling,

or a boundary-marker for commingling ownership of private property.

### Tractate Pesahim

In connection with Tractate Pesahim, concerning the Passover festival, Scripture deals with these topics in order:

- (1) setting aside and killing a lamb for the Passover (Exo. 12: 1-13);
- (2) unleavened bread and the taboo against leaven and what is leavened, with the festival of unleavened bread (Exo. 12:14–20); and
- (3) the lamb again (Exo. 12:21–28). Deut. 16: 1–8 is explicit that the sacrifice of the Passover lamb is to take place only in Jerusalem.

The tractate deals with these topics:

- I. Preparation for Passover
  - A. Removal of leaven
  - B. Removal and avoidance of that which is fermented
  - C. Other requirements for the fourteenth of Nisan
- II. The Passover offering: Slaughtering and eating it
  - A. General rules on slaughtering the lamb designated as the Passover offering
  - B. The special problems of the Sabbath
  - C. Roasting and eating the Passover offering
  - D. Uncleaness and the Passover offering
  - E. Not breaking the bone of the Passover offering
  - F. Eating the offering in a group other than the natural family
  - G. Dealing with unclean and other persons in whose behalf the Passover is not to be slaughtered
- H. The second Passover
  - I. The animal designated for a Passover that is lost, or for which a substitute is designated
  - II. The Passover seder: General rules on slaughtering the lamb designated as the Passover offering

Tractate Pesahim presents the topics in logical order. The first deals with the prohibition of leaven and other preparations for the festival, and the second deals with offering the Passover

sacrifice, then roasting and eating it. The law thus focuses upon the cult, even though it does so in connection with a rite that is carried out in the home. A third rather perfunctory section takes up the rite of the seder, the Passover meal itself. The law in Pesahim takes for granted knowledge of the existence of a Passover ritual such as is contained in the haggadah. The tractate provides no rules for conduct on the festival days, for these occur at tractates Mo'ed Qatan and Besah and cover all festival days equally.

The topical program of the law addresses only two subjects, leaven and its removal, and the Passover offering. It moves, therefore, from household to Temple, with the brief appendix of the third section reverting to activities in the household. Removing leaven from the household aligns it with the Temple, where baked products served to God do not contain leaven (or sweetening). Requiring the consumption of the Passover offering's meat at home introduces considerations of cultic cleanness. The result is that on Passover the Israelite household, insofar as possible, is treated as analogous to the Temple.

Scripture has supplied the facts. Pesahim has expanded upon them and drawn out what is implicit in them.

The law in Pesahim for the seder presupposes not much more than is spelled out: a festive meal with much wine, a rite of eating not only the sacrificial meat but appropriate herbs, as Scripture requires, and a narrative or haggadah focused upon the rites of eating the bitter

herbs and roasted meat. The meal further encompasses a recitation of the Hallel Psalms, but at this stage the law in Pesahim does not attend to the narrative of the Exodus such as occupies the Passover haggadah as it is practiced today. If we were to reconstruct the Passover haggadah from the law before us, we should find ourselves missing most of what is now at the heart of the rite.

### Tractate Yoma

Of the eight chapters of tractate Yoma, the first seven review Leviticus 16 and provide a narrative bearing interpolated materials of the sacrificial rite of the Day of Atonement. The eighth chapter does little more, taking up the rules of "affliction of soul," that is, fasting.

## I. The conduct of the temple rite on the Day of Atonement

- A. Preparing the high priest for the Day of Atonement
- B. Clearing the ashes from the altar
- C. The daily whole offering on the Day of Atonement
- D. The high priest's personal offering for the Day of Atonement
- E. The two goats and other offerings on the Day of Atonement
- F. The scapegoat and its rule
- G. The rite concludes with reading from the Torah and with prayer

## II. The laws of the Day of Atonement

- A. Not eating, not drinking
- B. Repentance and atonement

Only when we reach the concluding statements of the law in Yoma do we move beyond the reprise of the Torah's narrative. And then the presentation of the law tells us what is at stake; the prophetic reading of the cult. The Mishnah, which is repeated within the Bavli, states the law as follows:

He who says, "I shall sin and repent, sin and repent"—they give him no chance to do repentance... "I will sin and the Day of Atonement will atone,"—the Day of Atonement does not atone. For transgressions done between man and the Omnipresent, the Day of Atonement atones. For transgressions between man and man, the Day of Atonement atones, only if the man will regain the good will of his friend. This exegesis did R. Eleazar b. Azariah state: "From all your sins shall you be clean before the Lord (Lev. 16:30)—for transgressions between man and the Omnipresent does the Day of Atonement atone. For transgressions between man and his fellow, the Day of Atonement atones, only if the man will regain the good will of his friend." Said R. Aqiba, "Happy are you, O Israel. Before whom are you made clean, and who makes you clean? It is your Father who is in heaven, as it says, And I will sprinkle clean water on you, and you will be clean (Eze. 36:25).

And it says, O Lord, the hope [miqweh = immersion pool] of Israel (Jer. 17:13)— Just as the

immersion pool cleans the unclean, so the Holy One, blessed be he, cleans Israel."

Mishnah tractate Yoma 8:9

Sages understood the prophets' critique not as a repudiation of the cult but as a refinement of it, and in the very context of their account of the blood-rite, they invoke the prophets' norms alongside the Torah's; Jeremiah's call to repentance, Isaiah's reflections on the role of death in the penitential process, and Ezekiel's insistence on purity of spirit.

These flow into the exposition of the law. The rites of atonement do not work *ex opere operato*, but only conditionally, and it is the attitude and intention of the Israelite that sets that condition. The rites atone and so does death, but only when joined with repentance.

And repentance reaches its climax in the cleansing effect of the occasion, the Day of Atonement itself. But the entire system realizes its promise of reconciliation with God only on one condition: the Israelite must hold the right attitude to begin with.

## Tractate Sukkah

Scripture supplies nearly all of the pertinent facts of Sukkot, the feast of booths or tabernacles, in Lev. 23:33–43. Num. 29:12–38 specifies the offerings on the occasion of the festival of Sukkot and Deut. 16:13–15 specifies the use of the booth:

### I. The appurtenances of the festival of Sukkot; the sukkah, the lulab

- A. The sukkah and its roofing
- B. The obligation to dwell in the sukkah
- C. The lulab and the etrog

### II. The rites and offerings of the festival

- A. The festival rites carried out on various days of the festival
- B. The offerings

The law in Sukkah takes as its task the presentation of three topics:

- (1) Temple rites;
- (2) home obligations; and
- (3) special media for, and modes of, the celebration of the festival.

The building the sukkah, or shelter, is first; followed by consideration of the media for the



celebration, the lulab and etrog; and finally the Temple rites in their own terms and context. The tractate begins with the amplification of the practical requirements of how the sukkah is constructed and defining what marks an invalid one. The sukkah is to resemble a house but should not replicate one. It is the abode of the wilderness, impermanent but serviceable under the circumstances. The sukkah must resemble a dwelling, casting a shadow and affording protection from the sun, but it does not shelter from the rain and a strong wind will knock it over. There are more important and definitive traits that distinguish the sukkah from the house. It must be constructed out of doors, not under a tree. It must be built for that particular holiday, meaning, the roofing (sekhakh) must be put up for the occasion, just as the Passover lamb must be designated for a particular “sacrificer” (the person who sets an offering aside for God, not the person physically preparing the animal for sacrifice) and for a particular Passover occasion (by definition, since the lamb has to have been born after the last Passover). The roofing moreover forms the center of interest, the walls not having to be modeled on conventional housing, and the key for the roof is that the shade it provides must exceed the light but cannot block out all light. The main purpose of the impermanent abode, like that in the wilderness, is to provide shelter from the sun.

The sukkah must derive from man’s artifice and intent. It cannot be formed of what is attached to the ground, but must be made of what has grown from the ground, what is insusceptible to uncleanness, and what has been cut down. It must be built deliberately by a person, as a natural sukkah would be an oxymoron. It must represent an occasion and not be a permanent arrangement, as a permanent sukkah would also be an oxymoron. The sukkah roofing must afford shelter by means derived from nature, but of something that has been detached from nature. Human intervention is required.

The sukkah in its transience is to match Israel’s condition when it was in the wilderness, wandering between Egypt and the Land, between death and eternal life. It is a temporary abode suspended between heaven and earth. Just as Passover marks the differentiation of Israel from Egypt, expiating sin through the Passover offering and through the death of the first-born, and by this

expiation attaining life, so Sukkot addresses the condition of Israel. It is, we must remind ourselves, the generation of the wilderness with which we deal, the generation that must die out before Israel can enter the Land. Thus entering the sukkah reminds Israel not only of the fragility of its condition but also—in the aftermath of the penitential season—of its actuality: still sinful and still awaiting death, so that a new generation will be ready for the Land. The festival of Sukkot recapitulates that interstitial circumstance between death in Egypt and eternal life in the Land. The now-abode of Israel-in-between is the house that is not a house, protected by a roof that is open to the elements but serves somewhat: it is Israel en route to death (for those here now) and then to eternal life (for everyone then).

### Tractate Besah

Tractate Besah (a.k.a. Yom Tob, “a good day,” festival) deals with the preparation of food on the festival day itself. It is not permitted to prepare food on the Sabbath, but on the festival day Scripture permits doing so: “On the first day you shall hold a holy assembly, and on the seventh day a holy assembly; no work shall be done on those days; but what everyone must eat, that only may be prepared by you” (Exo. 12:16). What is permitted on the first and seventh days of Passover is also permitted on Pentecost and on the first and seventh days of Tabernacles.

The tractate covers preparing food on the festival day.

I. Cases and their implications

II. Designating food before the festival for use on the festival

III. Doing actions connected with preparing food on a festival day in a different

manner from ordinary days; other restrictions

IV. The status of a person’s possessions in respect to the Sabbath limit

One may prepare food on the festival days of Passover, Pentecost, and Tabernacles.

Scripture is explicit on that point. But the law of Besah wishes to raise searching questions. If I had to select the most pervasive principle of law in this tractate, it is the insistence on designating food before the festival for use on the festival on the

one hand, and linking the status of the household to the status (e.g., as to location) of one's possessions on the other. In advance of the occasion the householder must designate for use on the festival what he is going to prepare on the festival.

Doing so represents an act of particularization, this batch of food for this festival in particular, and this act of particularization is entirely familiar to us in a different context.

From the law of Pesahim, we recall that the Temple and its offerings define that context where the animal to be used for a Passover offering must be designated for that purpose.

Once an animal is thus designated, without appropriate rite it cannot be used for some secular purpose or even for some other sacred purpose. So also an animal designated for use as a sin-offering must be linked to a particular sin; the farmer who presents it must have in mind the inadvertent transgression that the animal is set aside to expiate. A general statement that a given animal expiates generic sin will not do. Besah insists on the same procedure in connection with the bulk of food and utensils to be used for food preparation for the festival. It treats the food for the table as comparable to the food for the altar. The same rule governs the identification and particularization of both food and utensils, each for its respective purpose.

The governing principles are these. First, food for use on the festival must be available and designated for that purpose, actually or potentially, prior to the festival. Second, may one or may one not carry on the preparation of food on the festival in exactly the same way in which one does on an ordinary day? Third, may one or may one not prepare what is required for the preparation of food, that is, secondary or tertiary acts of labor, in the same manner in which one does on an ordinary day? Finally, may one or may one not do such acts of labor at all? It is the Sabbath that supplies the governing analogy. The tractate distinguishes the actual preparation of food, which the written Torah permits, from acts of labor required for the preparation of food, that is, acts of labor indirectly involved in food preparation. The analogy of the Sabbath is ever present.

## Tractate Rosh Hashanah

Scripture's presentation of the festival of Rosh Hashanah ("the beginning of the year"), the New Year, commences with the identification of the new moon of the month Nisan (Exo. 12: 1P2). The New Year par excellence, the one marked by the new moon of the month Tishré, is covered in Lev. 23:23–25, and more elaborately at Num. 29:12–38.

I. The designation of the new month through the year

- A. The four New Years
- B. The new moon: receiving testimony of the appearance of the new moon and announcing the new month

II. The shofar ("ram's horn") sounded on Rosh Hashanah

- A. The law of the shofar
- B. The liturgy of the New Year
- C. Sounding the shofar in the liturgy

The shofar, or ram's horn, according to Rosh Hashanah, is sounded in the Temple—so Scripture states explicitly—but also in the synagogue. The portions of the Mishnah and the Talmud devoted to the New Year work out two matters: first, the sounding of the shofar, and second, the character of the synagogue liturgy. Scripture knows that the shofar is integral to the Temple rite. But the presentation of the synagogue-liturgy by the rule of Rosh Hashanah insists upon the shofar-rite as integral to synagogue worship. From this it follows that the law of the oral Torah centers upon the synagogue service in connection with the divine judgment of mankind. The law deems the shofar-rite particular to the occasion of judgment upon the occasion of the New Year marked by the first day of the month Tishré and, it follows, legislates as much for the synagogue as for the Temple.

Rosh Hashanah is the Day of Judgment for Israel, and, within its understanding of Israel's relationship with God, that judgment takes place wherever Israel is located, not only in the Temple, but also in the city, or even in the Land of Israel. Rosh Hashanah is represented by the Talmud as a utopian occasion, hence as much a moment of the synagogue as of the Temple.

The law at hand makes sense only in light of the haggadic exposition of the ram's horn, well-embodied in the following, which carries us even to the matter of substitution, *temurah*, with which this part of the exposition commences:

A. "And Abraham lifted up his eyes and looked, and behold, behind him was a ram, [caught in a thicket by his horns. And Abraham went and took the ram and offered it up as a burnt offering instead of his son]" (Gen. 22:13):

B. What is the meaning of the word for "behind"?

C. Said R. Yudan, "'Behind' in the sense of 'after,' that is, after all that happens, Israel nonetheless will be embroiled in transgressions and perplexed by sorrows.

But in the end, they will be redeemed by the horns of a ram: 'And the Lord will blow the horn' (Zech. 9:14)."

D. Said R. Judah bar Simon, "'After' all generations Israel nonetheless will be embroiled in transgressions and perplexed by sorrows. But in the end, they will be redeemed by the horns of a ram: 'And the Lord God will blow the horn' (Zech. 9:14)."

E. Said R. Hinena bar Isaac, "All through the days of the year Israelites are embroiled in transgressions and perplexed by sorrows. But on the New Year they take the ram's horn and sound it, so in the end, they will be redeemed by the horns of a ram: 'And the Lord God will blow the horn' (Zech. 9:14)."

Genesis Rabbah LVI:IX.1

Now we understand why what is important is the exposition of the law of the shofar, on the one hand, and the rites of the synagogue, on the other.

### Tractate Ta'anit

Drought, famine, and war signal God's displeasure with Israel and occasion acts of repentance and atonement. These acts of repentance and atonement take the form of public fasting and prayer. In times of crisis Israel jointly and severally relates to God through acts of supplication joined to penitence for sin. Among critical events that provoke a response of penitence, drought takes first place. The law in the first section of Ta'anit prescribes rules governing this occasion and its rite. A counterpart to these

occasions of crisis for ordinary times is presented in the second section by the participation in the cult by a priestly family of a given locale. A delegation of Levites and lay-Israelites would accompany the priests, twenty-four of them, over the course of a year. Then the entirety of the community, meaning non-priests, would participate at home through the recitation and study of verses of Scripture.

I. Fasts called in order to bring rain

- A. The sequence of fasts for rain
- B. The liturgy of the community for a fast day
- C. Other rules about public fasts
- D. Other uses of the shofar as an alarm

II. The delegation [*ma'amad*]: Israelite participation in the cult; various special occasions

- A. The delegation
- B. Mourning days for public calamity

The law of Ta'anit sets the norms for two distinct relationships, the one in a time of trouble, the other in a time of tranquility. In the one Israel responds to social and political crisis; in the other, to the on-going processes of creation.

Fasting and prayer in time of drought: Prayers for rain are offered from the festival of Tabernacles forward; that is, from when the rainy season ordinarily commences. If the rains do not commence two weeks after the festival, from the beginning of the following lunar month *Marheshvan* then a series of fasts gets underway. These begin as private fasts, but quickly become public and communal. Other occasions of fasting and mourning for public calamities commemorate specific events in the history of Israel's relationship with God: the breaking of the tablets of the law, the cancellation of the daily whole offering, the breach in the city wall, the profanation of the Temple, and the destruction of the Temple.

The delegation in time of tranquility: The presence of the delegation of Israelites serves to establish all Israel's representation when the offerings are presented. Thus the early prophets made the rule of twenty-four watches, and for each watch there was a delegation (*ma'amad*) in Jerusalem made up of priests, Levites, and Israelites. Israel in the provinces takes up its position in the Temple by sending agents to represent the home community

when its representative priests take their turn at the altar.

Israel relates to God through prayerful statements to him on ordinary and natural, as well as on extraordinary and historical, occasions. That is why regular prayers for rain are supplemented by extraordinary prayers and related activities. This occurs when, the everyday prayer not having sufficed, the rhythm of nature is disrupted so that rain does not come in its season and the orderly gives way. On such occasions Israel responds to the admonition announced by those events by evaluating its relationship with God and identifying the flaws on its part that have provoked divine punishment in the form of drought. Israel relates to God not only in the Temple and through the possessions and goods of those set aside for religious tasks, but also in everyday encounters. Everywhere and all the time, God hears and answers prayer. Thus, when Israel prays and does not obtain its need, e.g., for rain at the proper season, then Israel responds by showing its humility and remorse for sin.

### Tractate Megillah

In tractate Megillah the law combines rules for declaiming the Megillah, the scroll of Esther that must be recited at Purim, and rules for declaiming other obligatory passages of Scripture. Israel must hear these passages from Scripture not only in community—that is, with other Israelites, for instance, in the marketplace of the village—but also in the framework of a particular location, the synagogue and there alone. This accounts for the Megillah’s presentation first of the case (the public recitation in the synagogue of the Megillah) and then of the rule (the public declamation of other passages of the Torah).

- I. The laws of declaiming the scroll of Esther
- II. The laws of synagogue property and liturgy
  - A. The disposition of synagogue property
  - B. Rules for reading scriptures in synagogue worship
  - C. The lections

Megillah primarily addresses the proper understanding of the synagogue. A synagogue is not defined by a contained space of a particular character. Rather, a synagogue is defined as the presence of the quorum of male Israelites

assembled for the conduct of certain specific activities. The law in Megillah does not specify the traits that a building must exhibit in order to qualify for use as a synagogue, though it does recognize that a building may be consecrated for synagogue activities alone. The law, however, does indicate what is necessary for the conduct of the activities particular to a synagogue, and it does so in terms of the presence of holy Israel embodied in ten males. The synagogue finds its definition in its function; it is not a place to which Israelites go to meet God, as the Temple is. Rather, it is utopian in the simplest sense: anyplace where ten Israelite males conduct a specified activity, the function of the synagogue is carried out. A synagogue exists without regard to the location of the assembled male Israelites or the character of the space that contains them. Now, as a matter of fact, that qualification is explicitly not the case when we define the two other venues where Israel and God meet, the Temple and the “enlandised household.” This enlandised household extends to the village, that is, the household in the Land of Israel possessed of a plot of land in the Land. To state matters negatively, the Temple cannot be defined as the place where ten Israelites come together to kill a cow. The enlandised household cannot be set forth as a location where ten Israelites produce crops; it is only a plot of ground owned by an Israelite in the Land of Israel that produces crops.

The Temple is locative in that it can only be where it is and nowhere else—in Jerusalem on the Temple mount. And, in positive terms, it is there and only there that the activities characteristic of the Temple can be carried out. Israelites may say their prayers anywhere, may gather to hear the Torah declaimed in any location. But to slaughter an animal designated for God, to collect its blood and toss the blood upon a stone altar, to burn up parts (or all) of the animal as an offering made by fire to God—these activities can take place only in that one place.

### Tractate Mo’ed Qatan

Mo’ed Qatan addresses conduct on the intermediate days (lying between the two high holy days) of festivals, that is, during Passover and Tabernacles. Scripture provides the prohibitions of labor for the opening and closing days of the

specified festivals (Exo. 12:16, Lev. 23: 7–8, Num. 28:18, 25; 29:12–35).

I. Labor on the intermediate days of the festival

- A. In the fields
- B. Miscellanies
- C. Cases of emergency and loss

II. Commerce

III. Burial of the dead, mourning on the intermediate days of a festival

The law of Mo'ed Qatan deals with actions that are permitted or prohibited on the intermediate days of Passover and of the festival of Tabernacles, with special reference to farming and commerce and also to special problems involving the burial of the dead on those days. The first two sections are concerned with labor and commerce. For these activities, there are two governing principles. The first is that one may carry out an act of labor that prevents substantial loss, but only if the act is not onerous. The second is that work that ought to have been done prior to the festival may not be postponed and done on the intermediate days.

The intermediate days may not be treated as ordinary work days, even though they are not observed as festival days are (with the complete cessation of all labor except for cooking).

On the intervening days of the festival the field may be watered, but not through vigorous labor. Since many other acts of labor in the fields are, it is assumed, forbidden, that provision makes the point that the householder may do such labor as is required to preserve what he has, in this case, the care of existing crops, but he is not to work to improve his crops.

The third section of Mo'ed Qatan is concerned with the connection between rites of mourning and the rules governing conduct on the intermediate days of the festival. What has death to do with the intermediate days of the festival? To understand this apparent discontinuity one needs to know that the principal mode of thought of the Mishnah is that of "comparison and contrast." Something is like something else and therefore follows its rule; or it is unlike the other and therefore follows the opposite of the rule governing the something else. In the case of death and mourning during the intermediate days of the festival, it is important to

see that the sadness and mourning occasioned by death is the opposite of the joy and celebration occasioned by the festival. Yet experience shows that extremes of emotion—grieving and rejoicing—often come together in the normal cycle of life and the passage of time. Each takes its place on a continuum with the other, whether from the perspective of the passage of time or the passage of life in nature and whether from the perspective of the sacred or the standpoint of uncleanness. The natural rhythm of the year brings Passover and Tabernacles, respectively the celebrations of the first full moon after the vernal and autumnal equinoxes. The natural rhythm of life brings its moments of intense emotion, too. But death and the festival also form moments of a single continuum, one of uncleanness yielding to its polar opposite, sanctification, and sanctification yielding to uncleanness. Death serves as a principal source of uncleanness, while the festival serves as the occasion for sanctification beginning with the removal of cultic uncleanness and the entry into a state of cultic cleanness. These opposites also take their place on a single continuum of being. And, as a matter of fact, death takes place as often on festivals and on Sabbaths as it does on secular days.

### Tractate Hagigah

At the pilgrim festivals, Passover, Weeks, and Tabernacles, Israelites are called to Jerusalem to be seen by, and to rejoice before, the Lord. Now the engagement entails not repentance and atonement, but celebration, and the act of rejoicing encompasses the eating of meat. The three requirements—appearing before God, keeping a feast to the Lord, and rejoicing—are made explicit in Scripture in Exo. 23:17, Deut. 16:15, and Deut. 16:14, respectively;

I. The appearance-offering, festal-offering, and peace-offering of rejoicing

- A. Liability, cost
- B. The festal offering and the Sabbath

II. The rules of cultic uncleanness as they affect ordinary folk and "Holy Things"

- A. Gradations of strictness of rules of uncleanness
- B. Holy things and the festival

The law of Scripture takes up the pilgrims' complementary obligations of sacrifice and cultic purity. The Israelite is to be seen in the Temple court on the feast with an obligatory whole-offering (birds or cattle): "None shall appear before me empty" (Exo. 23:15).

Keeping the feast furthermore means presenting a peace-offering when one makes his appearance on the first festival day of the feast. The duty of rejoicing involves a peace offering in addition to the festal peace-offering: "the peace-offering of rejoicing in the feast," in accordance with Deut. 27:7: "And you shall sacrifice peace offerings and shall eat there and you shall rejoice before the Lord your God."

The law of tractate Hagigah accordingly deals with two closely related topics on the single theme of the occasions on which common folk come to the Temple, that is, the pilgrim festivals. This law is devoted first to the festival-offerings, and second, to the conditions of cultic cleanness that pertain to and govern the right to consume part of the meat of those offerings. Three pilgrim festivals draw not only priests and Levites, but also the ordinary people, to the Temple. The pilgrims' three offerings called for by the pilgrimage are:

- (1) an appearance-offering or burnt-offering, which yields no food either for the sacrificer (the one setting aside the sacrifice) or for the sacrificer (the one physically sacrificing the sacrifice);
- (2) the festal-offering (Hagigah), which falls under the rules of peace-offerings and yields meat for the sacrificer; and
- (3) the peace-offerings of rejoicing, subject to the same law as the festal-offering. Since the ordinary folk are going to eat sacrificial meat, they have to make themselves ready to consume food possessing the status of "Holy Things." The law then encompasses not only the pertinent offerings but the rules of cleanness that govern on the occasion of the festivals.

The attitude of the pilgrim governs in the rite of purification. The effect of his act of purification through immersion is dictated by the attitude with which he immerses himself. If one was unclean and immersed oneself with the intention of becoming clean, that serves. One who immerses in order to rise up from uncleanness to cleanness, lo,

this person is clean for all purposes. One who immerses—if he had the intention of becoming clean, he becomes clean. And if not, he remains unclean. As it states in Hagigah (as taken from the Mishnah):

[If] he immersed for eating food in the status of Holy Things and is thereby confirmed as suitable for eating food in the status of Holy Things, he is prohibited from engaging in the preparation of purification water. [If, however], one immersed for the matter requiring the more stringent rule, he is permitted to engage in the matter requiring the less stringent rule. [If] he immersed but was not confirmed, it is as though he did not immerse.

Mishnah Tractate Hagigah 2:6D–F

### Tractate Yebamot

The law of levirate marriage—marriage of the widow to a brother of the childless deceased husband for purpose of procreation—aims at bringing about the realization of that original act of consecration (of marriage), which was procreation. This is explicit in the Torah, which seeks to maintain the deceased's "name" in Israel ("name" here standing for household, extended family). The deceased's widow is to produce a child with a surviving brother completing the purpose of the original union though by unanticipated means (Deut. 25:5-10). The premise of the reproductive purpose of marriage rests on the penalty for his failure to comply—the deceased's brother is called a "name"—by refusing to give his deceased brother a "name," that is, offspring.

- I. When the levirate connection does not pertain
- II. The interstitial case: the flawed levirate connection and the rite of removing the shoe
- III. The consequence of the levirate marriage
- IV. Marriages that violate the restrictions of the Torah: the consequences for the priesthood as to the consumption of priestly rations
- V. Marriages that are subject to doubt by reason of the status of the parties thereto
- VI. The rite of removing the shoe
- VII. Exercising the right of refusal: the minor and levirate marriage
- VIII. The marriage of the deaf-mute and the person of sound senses

IX. Ascertaining whether the husband has actually died

A writ of divorce, abrogating the intentionality affirmed in marriage, does not present the only way in which the law nullifies the initial act of consecration of a woman to a man.

Death also serves to deconsecrate the conjugal bed, but for a different reason. If the husband dies having produced offspring, the governing intentionality accomplished its purpose and the wife may proceed to the next marriage if she wishes. The transaction is sealed by the offspring.

What happens if the husband's goal in consecrating the woman—children—has not come to fruition? Scripture maintains the goal of the original act of consecration has not been attained. The desacralization of the original intention of sanctification, confirmed by offspring, does not take place. The woman remains consecrated for the as-yet-unrealized purpose of the union. Then, so far as is possible, the widow bears the obligation to accomplish the intention that resulted in marriage. Here circumstance intervenes—a surviving brother of the childless deceased may take his place as husband of the widow.

Scripture deems the widow's role to be active; she is the one who demands the realization of the original consecration. The surviving brother is an instrument in the fulfillment of the couple's agreement. The surviving brother(s) may, however, prevent the transaction, in which case the woman is freed of her status of sanctification. The rite of removing the shoe, *halisah*, provides the legal counterpart to the presentation of a writ of divorce (Deut. 25:7-10). There is this obvious difference; the unwilling brother takes the passive role while the outraged widow takes the active one. Her task is the embodiment and fulfillment of that sanctification that she has willingly accepted for herself, a task that the surviving brother has refused to share. She bears as heavy a stake in the marriage as her now-deceased husband, but her brother-in-law has failed in his Heavenly task.

When Heaven intervenes in a consecrated relationship and severs it, no writ of divorce is required to free the woman from the marriage. In the law of levirate marriage, Heaven may have also arranged matters so that a union of a surviving brother with the widow contravenes other laws of the Torah. Heaven bears

responsibility for the refusal of the levirate marriage when the deceased childless man's widow is related to the surviving brother in a relationship prohibited by the Torah, e.g., if she is the sister of the surviving brother's wife.

### Tractate Ketubot

Tractate Ketubot first treats the document of marriage, the *ketubah*, which provides for support for the wife by the husband and a settlement in the event of divorce or the husband's death. This also promises restoration to the wife's family and patrimony the lands, goods, and capital brought by the wife into the marriage and reserved for her male children by her husband. Ketubot then addresses questions pertaining to the middle of the marriage, when the couple is living together, and finally it addresses questions pertaining to the end of the marriage and the settlement of the contract. The law thus addresses the whole of a marriage; its beginning, middle, and end.

- I. Foundation of the household: the material rights of the parties to the marital union, the wife
  - A. The marriage contract of the virgin
  - B. Conflicting claims for the marriage contract of a virgin
  - C. The rules of evidence in connection with the validation of the marriage contract
- II. The formation of the marriage: the material rights of the parties to the marital union, the father and the husband
  - A. The fine that is paid to the father for rape or seduction (Deut 21:22)
  - B. The father
  - C. The father and the husband
  - D. The husband
- III. The duration of the marriage: the reciprocal responsibilities and rights of the husband and wife
  - A. The wife's duties to the husband
  - B. The husband's obligations to the wife
  - C. The dowry
  - D. The marital rights and duties of the wife
  - E. Property rights of the wife
- IV. The cessation of the marriage: the collection of the marriage contract

- A. Imposing an oath in connection with collecting the marriage settlement
- B. Multiple claims on an estate, including the wives' for their marriage settlement
- C. Support for the widow
- D. Rights to, and collection of, a marriage contract: special cases
- E. Two case-books

Scripture figures only episodically, especially in two matters. First Deut. 22:28–29 mentions the fine for rape, which is paid to the father. In a related matter, Exo. 22:15–16 decrees the fine for seduction. Deut. 22:13–21 contributes to the second aspect of the law and is concerned with conflicting claims as to the virginity of the bride. Scripture does not, however, contribute the requirement that a marriage agreement provide for the woman's support in the event of divorce or of the death of her husband.

The topic of marriage contracts in Ketubot takes as its generative problem the reciprocal and corresponding rights and obligations of all parties to the marriage at each point in the unfolding of the marriage. These parties are the girl, the boy, and the girl's family, specifically her father. The marriage contract then defines the locus for the negotiation of the rights and obligations of each. All parties have an interest in the orderly formation of the social and economic fact of the marriage—the foundation, after all, of the household— as well as in its orderly dissolution. In the present context, that dissolution means collecting the settlement from the husband's estate.

### Tractate Nedarim

The Scripture addresses the taking of vows in Num. 30: 1-16. Most of the passage presents the enforcement or abrogation of vows made by a daughter while in her father's house or subsequently of a wife in her husband's house. The essential ruling is that a person is not to break his word but to keep "all that proceeds out of his mouth."

Honorable folk do not vow at all.

- I. The language of vows
  - A. Euphemisms
  - B. Language of no effect

- C. Language of limited effect

### II. The binding effects of vows

- A. Vows not to derive benefit
- B. Vows not to eat certain food
- C. Vows not to use certain objects
- D. The temporal limitation in vows

### III. The absolution of vows

- A. Grounds for the absolution of vows
- B. The annulment of the vows of a daughter
- C. The annulment of the vows of a wife
- D. The husband's power to annul the wife's vows: special rules
- E. Vows of a woman that are not subject to abrogation

Scripture treats the matter as principally one involving women—wives and daughters— while the Talmud presents it as a sex-neutral matter, treating vows made by men and women alike. The presentation of the law in Nedarim starts with the definition of a vow and then proceeds to consider the effects of a vow upon what a person may or may not do, most frequently with respect to what they eat. It concludes with a detailed look at how, on diverse grounds or pretexts, one may gain absolution from a vow and release its binding character.

The law begins by considering the language used in vows that is "null," or without consequence.

Euphemisms are null because they contradict reality. Language that refers to idols or idolatry, by virtue of their unreality, is not effective.

Language used without adequate reflection, e.g., vows of incitement, on the one hand, and vows of exaggeration, on the other, are null because the vow does not follow from much thought.

Moreover, the intention behind the language of such vows is inappropriate. Vows of incitement, e.g., to purchase an object at a given price, embody inappropriate intentionality; they are only meant to influence the other. Vows made in error, like acts of consecration made in error, do not reflect the intention of the speaker, and so are null. Obviously vows broken under constraint are null. Along these same lines, one may intentionally take a false vow to save life or limb or to deceive the thief and the tax-collector (who was regarded as one and the same).



Vows are remitted or lose effect when the conditions specified in them have been realized or proven null. They also are remitted when the purpose of the vow is shown to have been spurious, e.g., “Did you not speak only to do me honor? But this [not taking your wheat and wine for my children] is what I deem to be honorable!” Further, vows cannot in the end take effect so as to bring about the violation of existing obligations or contracts. A vow against what is written in the Torah is null; one that violates the marriage contract is ineffective; one that requires dishonoring parents is null. Vows that contradict the facts explicitly invoked in making them are null. The point is obvious: language takes effect only when the facts and intentions embodied in the language are valid.

### Tractate Nazir

The Nazirite, treated in Num. 6: 1–21, is an Israelite who for a determinate period observes important laws governing the priesthood by not drinking wine, by not cutting hair, and by not contracting corpse-uncleanness. Scripture deals with two topics, the restrictions self-imposed by the vow, and the offerings required in connection therewith.

The law of Nazir amplifies the matter in the following way:

#### I. The special vow of the Nazirite

- A. The language of the vow to be a Nazirite
- B. Stipulations and the Nazirite vow
- C. The duration of the vow
- D. Annuling the vow

#### II. The special offerings of the Nazirite: designation and disposition

#### III. Restrictions on the Nazirite

- A. The grape
- B. Cutting hair
- C. Corpse-uncleanness
- D. Doubts in the case of a Nazirite

A person who has taken the Nazirite vow, then, is comparable to a kohen or priest and is subject to certain prohibitions and assigned a particular position in the conduct of the Temple cult. The priest cannot serve if he is drunk, contaminated by a corpse, or bald. (A bald-headed man may not

serve as a priest, Mishnah tractate Bekhorot 7:2A.) The Nazirite vow forms a subdivision of the larger category of vows and is understood as continuous with the exposition of that topic. This follows from the right of the husband to annul his wife’s vows, including the Nazirite vow.

As noted also for Nedarim, the law in Nazir focuses not on the literal language that invokes the vow, but on euphemisms that may or may not pertain. Language that is similar in sound or in sense takes effect. Stipulations that might affect the vow, conditions under which the vow is or is not invoked, the making of sequences of Nazirite-vows in a single moment, and the duration of the vow (undefined in Scripture) are taken up next. The intervention of the husband with regard to the vow his wife has taken is discussed following that.

The laws of Nazir then turn to designating the diverse animals that are to serve as the Nazirite’s offerings at the end of the vow, with special attention given to situations in which the animals are not used in accordance with the original language of sanctification.

At stake in the vows treated by both the laws of Nedarim and in Nazir (for the special vow of the Nazirite) is the realization of intention brought about through the use of language.

The sages portray matters relating to the language used for vows as contaminating. Language ought to express carefully reflected-upon intentionality, as in the designation of an animal to expiate an inadvertent, newly-realized sin. Too often, however, language conveys the outcome of temper and frustration. Designating a beast as consecrated for the expiation of sin realizes a noble, godly intention. Designating the benefit one receives from one’s spouse as Corban (set aside for an offering) may use language to disguise a lowly and disreputable intention, to humiliate, reject, or disgrace the other. The sages’ message states that the language of vows is dangerous because it realizes intentionality. Thus such vows had best be expressed with probity and restraint. These virtues of probity, restraint, and reflection are too often opposite from the traits of mind and character of the vow-taking Israelite, whether wife or husband, host or guest, salesman or customer.

## Tractate Sotah

The sotah (the wife accused of adultery) is subjected to a Temple rite (ordeal) described at Num. 5:11–31. The exposition of the law of Sotah in the Mishnah and the Talmud follows this outline:

- I. Invoking the ordeal
- II. Narrative of the ordeal
- III. Rules of the ordeal
  - A. Exemptions and applicability
  - B. Testimony and exemptions from the ordeal
- IV. Rites conducted in Hebrew
  - A. A catalogue
  - B. The anointed for battle and the draft exemptions
  - C. The rite of the heifer

The injustice done to the innocent wife required to undergo the humiliating ordeal of the bitter water by her husband's whim serves as the law's occasion in Sotah to make a definitive statement that God's justice is perfect: the wicked get their exact punishment, while the righteous receive their precise reward. It is not enough for the law to show that sin or crime provokes divine response and that God penalizes evil-doers. Justice in the here-and-now is served only when the righteous also receive their reward. The Scripture's casual remark that the woman found innocent will bear more children provokes elaborate demonstration in Sotah. This special interest in Sotah springs from the established facts of history that Scripture supplies, that both the righteous and the wicked are subject to God's flawless and exact justice.

The law as set forth in the Mishnah and the Talmud conceives of a two-stage process and two kinds of testimony. In the first stage, a wife is warned by her husband not to get involved, for instance, he forbids her to speak to another man. But in the event she does, she is not by her action prohibited from living with her husband. In the second stage, witnesses attest that it is possible she could have committed adultery. The law then insists on valid evidence if it is to deprive the wife of her marriage settlement. A single witness to the alleged act of intercourse outside of marriage does not suffice. Moreover, those who ordinarily cannot testify against her, e.g., her mother-in-law, the

daughter of her mother-in-law, her co-wife, the husband's brother's wife, or the daughter of her husband, do not have the power to deprive her of her property rights in the marriage. Even if they testify against her, she still collects her settlement. By the testimony of such witnesses, she does not have to undergo the rite (ordeal), but, rather, she is divorced in due course and the transaction concludes there.

Before the ordeal is invoked, the Talmud insists on some sort of solid evidence both of untoward sexual activity and also of clear action on the part of the wife. There must be at least the possibility, confirmed through a specific case, that adultery has taken place. In contrast to Sotah, the Scripture leaves everything to the husband's whim, to his "spirit of jealousy." In Sotah if the husband gives his statement of jealousy and the wife responds by ignoring the statement, the ordeal does not apply. The wife has to indicate by her specific action that it is possible that the husband is right. In the written Torah, the ordeal settles all questions. In the oral Torah, the ordeal takes place only in carefully defined cases where sufficient evidence exists to invoke the rite, but insufficient evidence exists to make it unnecessary, that is, there is well-established doubt.

## Tractate Gittin

The writ of divorce, to which reference is made at Deut. 24: 1–4, severs the sacred relationship of husband and wife in Heaven's eyes. The Mishnah and Talmud take up the provision of the document and the rules governing its transmission in Gittin.

- I. The writ of divorce
  - A. Transmitting the writ of divorce
  - B. The writ of divorce and the writ of emancipation of slaves
  - C. Preparing a writ of divorce
- II. Rules of agency and writs of divorce
- III. Rulings pertinent to the writ of divorce made for good order and other similar rulings
- IV. The slave
- V. The wife's receipt of the writ of divorce
- VI. The husband's instructions on the preparation and delivery of the writ

A. Instructing agents to prepare the writ

B. The conditional writ of divorce

VII. The impaired writ of divorce

A. The writ of divorce that is subject to doubt

B. The writ of divorce that is subject to flaws or imperfections

C. An invalidating restriction in a writ of divorce

D. Confusing writs of divorce

Because the formation, transmission, and preservation of life constitute the critical issue with which the law is concerned, it understands that the purpose of a woman's consecration to marriage is to produce children. Gittin takes for granted that both parties must concur in the consecration to marriage, which consecration is a "sanctification" or "setting apart," indeed, a "making holy" for a particular purpose. More particularly the woman being betrothed to the man agrees on that occasion that she intends to carry out the responsibilities that her betrothal is meant to make possible. The sanctification of a woman accordingly takes place when the woman consents. Her consent means that she is available for that man and is not otherwise consecrated nor prohibited by rules of consanguinity or incest. Designating a woman as "holy" or "set apart" for a particular man requires the woman's participation through her assent. Put in the negative, unlike a beast sanctified for the altar, a woman enters the relationship of sanctification only when she agrees to do so. The consecrated relationship thus involves affirmative intentionality on the part of both parties.

This mutually affirmative intentionality is not the case when it comes to the writ of divorce. The desacralization of the relationship is the point at which the woman is no longer consecrated to her husband, but becomes available to another man of her choice (within the prohibitions of incest). In this desacralization the man (by divorce) or God (by death), but not the woman, intervenes. The husband on his own initiative acts to desanctify what he had intentionally previously sanctified. Scripture does not contemplate a role for the woman in its account of how the relationship of sanctification to a particular man is secularized, that is, how it is nullified.

Even though only the husband may initiate the writ of divorce, have it written, and have it delivered, the law provides the wife with an important part in the process of ordinary divorce. According to Gittin, the woman has (1) the right to dictate the conditions of delivery;

(2) the right to be correctly informed of the terms of the divorce; and

(3) the responsibility to dictate the circumstances under which she will receive the document.

With these rights and responsibilities, however, come severe and long-lasting penalties for a woman whose writ of divorce turns out to be impaired (and so invalid), who on the strength of such a document remarries. The woman must thoughtfully exercise her power within the transaction, for she is not only given a role in the process but also bears a very heavy responsibility in the correct implementation of the divorce.

### Tractate Qiddushin

Tractate Qiddushin ("sanctification") deals primarily with acts associated with the betrothal of a woman to a man, acts which render the woman sacred to that man. With respect to betrothal, Scripture provides only a subordinate clause at Deut. 24: 1, "When a man takes a wife and marries her." The act of "taking" involves "marries," a translation of the Hebrew word for, "have sexual relations with." Therefore Scripture provides little preparation for the topic, let alone the structure and system, of Qiddushin. The exposition of law in Qiddushin extends the principles governing the acquisition of persons and property to the act of betrothal.

#### I. Betrothals

A. Rules of acquisition of persons and property

B. Procedures of betrothal: agency, value, stipulations

C. Impaired betrothal

D. Stipulations

E. Cases of doubt

#### II. Castes for the purposes of marriage

A. The status of the offspring of impaired marriages

B. Castes and marriage between castes

### C. Cases of doubt

According to Qiddushin, just as a farmer might acquire a slave, an ox, or real estate, so a man effects possession of, or gains title to, a woman. Unlike the normal acquisition of property, however, the woman is an active participant in the transfer of title: she must consent. When she does consent, her status as a person, not as property, changes and the change is called “sanctification.” God’s stake in the transaction of the sanctification of a woman extends beyond individuals to the castes among which the community of Israel is distributed: priests, Levites, Israelites, and others as noted in the second section of the outline above. Men and women each belong to a particular classification, and that classification governs whether or not sanctification is even possible. The Torah defines the classifications of persons within the community who may not intermarry—Gentiles do not enter the picture—within the purview of the Torah. A woman’s personal status is affected by prior unions, e.g., marriage to a man to whom the Torah prohibits her, e.g., a widow to a high priest, a divorcée or equivalent to an ordinary priest, or a mamzer (a child of parents legally unable ever to marry, such as a brother and a sister, or the child of a married woman and a man other than her husband) to an ordinary Israelite. Ten castes are defined and summarized in Qiddushin.

Israel defines itself as holy in two ways: by nature (through birth) and by conviction (through adherence to the Torah). Sanctification by nature, the first of the two media for forming Israel as it will be realized in a given household, occurs when an Israelite man consecrates to himself an Israelite woman who is available to him. She must not be married or betrothed to someone else (the governing analogy being the consecration of the offering), nor forbidden to him by reason of incest taboos or caste regulations (the governing analogy being the consecration of the priesthood). Sanctification by nature continues when that union produces offspring. Sanctification by conviction takes place when, through those actions specified by law in connection with, for instance, food preparation, the Israelite sustains life in a manner similar to the way life is sustained at the altar.

### Tractate Baba Qamma

Three tractates related to civil law

The civil law of Judaism is set forth in the three tractates bearing Baba (“gate”) in their title, Baba Qamma (“first gate”), Baba Mesi’a (“middle gate”), and Baba Batra (“last gate”). For a summary of the relationship among these tractates see the conclusion of the introduction to tractate Baba Batra.

#### Baba Qamma

Baba Qamma expounds the process by which the victim of assault or robbery is to be returned to his prior condition with the thug or thief not gaining thereby. In this instance the Scripture supplies much of the information that the law in Baba Qamma sets forth.

Thus for the opening unit, there are four generative causes of damages: the ox (Exo. 21:35–36), a pit (Exo. 21:33–34), a crop-destroying animal (Exod. 22: 5), and fire (Exo. 22: 6). The law distinguishes between a beast that is deemed harmless and one that is an attested danger, with half-damages paid in the case of a goring by the former and full damages in the case of a goring by the latter, paid by selling an ox and dividing the proceeds (Exo. 21:35–36). The distinction between the rule covering payment of twofold restitution and the rule covering payment of fourfold or fivefold restitution derives from Exo. 22:1–3, 7. One compensates a person whom one has injured according to Exo. 21:18–19. Requiring compensation for what one has stolen is the point of Lev. 5:20–24. Thus by reference to the written Torah we may account for nearly the entire exegetical program expounded by sages in Baba Qamma.

#### I. Damages done by chattels

- A. The fundamental rules for assessing damages when the cause is one’s property, whether animate or not
- B. Damages done by chattels in the public domain
- C. Damages done by the ox
- D. Damages done by the pit
- E. Damages done by the crop-destroying beast
- F. Damages done by fire

#### II. Damages done by persons

- A. Penalties for the theft of an ox or a sheep
- B. Penalties for abuse of the land

## C. Penalties for assault

D. Penalties for damages done by persons to property; restoring what is stolen

Given these facts, what did the sages contribute to the elucidation of these laws of Scripture? They clarified details and worked out the secondary and tertiary implications. For instance, they spelled out the full range of responsibility: “In the case of anything of which I am liable to take care, I am deemed to render possible whatever damage it may do. [If] I am deemed to have rendered possible part of the damage it may do, I am liable for compensation as if [I have] made possible all of the damage it may do.”

(Mishnah tractate Baba Qamma 1:2A–C).

They defined the specifics required for applying Scripture’s general rules, for example, “a tooth is deemed an attested danger in regard to eating what is suitable for eating.” (Mishnah tractate Baba Qamma 1:4C). In the manner of geometry, they showed how, within a given set of postulates, a range of problems was to be solved to yield a proof for a set of theorems. In other words, they did everything but the main thing, which in the case of other native categories is to make a powerful, consequential legal statement of their own. And yet despite this omission, the native category delineated by Baba Qamma (along with the other two Baba tractates) takes the primary position in the curriculum of the classical academies where the law is studied.

### Tractate Baba Mesi’a

Continuing the topical program of Baba Qamma, Baba Mesi’a takes up where the former left off. Baba Qamma concludes with the analysis of the law of restoring what has been stolen. Baba Mesi’a starts with the law of restoring what has been lost. It then shifts to a new topic, the law governing transactions of an equitable character between buyer and seller, and between employer and employee. In the former case, the law focuses on the counterpart to theft, overcharging, and usury. In the latter, it proceeds to an account of what each party owes the other. It concludes with attention to matters of real estate, specifically to the relationships between partners in a given household, that is, relationships between tenant and landlord and relationships between tenant-farmer and householder.

## I. The disposition of other peoples’ possessions

- A. Conflicting claims on lost objects
- B. Returning an object to the original owner
- C. Rules of bailment

## II. Commercial transactions

- A. Overcharge and misrepresentation
- B. Usury

## III. Hiring workers; rentals and bailments

- A. The mutual obligations of worker and employer
- B. Rentals
- C. Bailments
- D. The mutual obligations of worker and employer
- E. Bailments

## IV. Real estate

- A. Prologue
- B. Landlord-tenant relationships
- C. The landlord’s relationships with a tenant farmer and sharecropper
- D. Paying laborers promptly; taking a pledge
- E. Joint holders of a common property

The law in Baba Mesi’a pays specific attention to the attitude of participants in a given transaction: when the participants’ attitude governs; when it is dismissed as null; and when it takes a subordinate position in an exchange. These three readings of the role of the will of the parties to a transaction—

- (1) paramount,
- (2) excluded, and
- (3) subordinated but effective—form the outline of Baba Mesi’a’s exposition.

When it comes to resolving conflicting claims, it focuses upon the attitudes of the participants to the conflict. First, parties in conflict ought to resolve the conflict in a manner that is not only equitable but also that is deemed to be equitable by all parties.

Second, in assessing rights of ownership, the attitude of the original owner is taken into account, particularly the one who gives up his title when he despairs of regaining his property. Third, in assessing liability of a bailee, Baba Mesi’a assigns restitution in proportion to the responsibility that

the bailee has accepted. In all three instances, therefore, the variables of the law respond to the attitudes of the participants in a transaction of untoward consequences.

When Baba Mesi'a deals with market-transactions, however, it treats as subordinate or dismisses outright as irrelevant the attitude of the players—both the informed seller and the willing buyer. Rather, it imposes the criterion of a fixed or true value. That criterion overrides the agreement of the parties to the transaction. The law underscores that in the face of the fixed and true value that inheres in a transaction, the willingness of the parties to ignore true value is simply nullified. A borrower may willingly pay usury—in the innocent form of a warm greeting, for instance, or a gesture of friendship—but the transaction is, nonetheless, illegal. Even though a purchaser is willing to pay a premium for an object, his attitude does not affect the value of the object. One may be willing to pay a premium for the use of capital, but such a premium is deemed not a return on capital, but usury, and is illegal. All transactions must conform to a measure of exact exchange of true value.

Private agreements can, however, be taken into account in other exchanges. In transactions involving labor, rentals, and bailment, the attitude of the participants to an agreement fixes the terms of the agreement, which then cannot be unilaterally revised. Labor, like slaves, bonds, and other documents, has no true value in the way that grain does. Each party bargains in good faith without the constraints governing usury. But once the transaction involving such and such a wage for work or when a span of labor is agreed upon by both parties, it is binding. Here the initial agreement governs because each party had acceded willingly to it and the attitude or intention of one party cannot then dictate changes not accepted by the other.

In the matter of bailments, liability corresponds to the level of responsibility imposed by the variable compensation available to the bailee; he is assumed to be willing to take greater precautions and accept more substantial liability in response to greater compensation.

## Tractate Baba Batra

Baba Batra begins in the middle of Baba Mesi'a's concluding topical section on the rules governing joint holders of a property. It proceeds to deal with further licit real estate transactions: not infringing the property rights of others, establishing title through usucaption, and the transferring of real estate and movables through sale. The next major section addresses licit commercial transactions and unstated stipulations in commercial transactions. The final section provides laws for inheritances and wills and also laws for other commercial documents.

### I. Real estate (continued)

- A. Joint holders of a common property [continuing Baba Mesi'a, See previous outline, IV.E]
- B. Not infringing upon the property rights of others
- C. Establishing title to a field through usucaption
- D. Transferring real estate (and movables) through sale

### II. Licit commercial transactions

- A. Conditions of irrevocable transfer of goods
- B. Unstated stipulations in commercial transactions

### III. Inheritances and wills, other commercial and legal documents

- A. Inheritance
- B. The preparation and confirmation of commercial documents, e.g., writs of debt
- C. Concluding miscellany

While Baba Batra encompasses a few facts of Scripture, it pursues its own program. Four main issues are dealt with. First, joint holders of a common property enjoy equal rights and equal responsibilities. Second, title passes through usucaption when properly established. Third, title to property covers what is integral to that which is sold, not to what is peripheral. Fourth, inheritances pass through the male line.

If I had to identify the central legal theme, it would be that both parties to a transaction have a right to a fair deal, and neither may emerge with more than what he possessed when he entered the

transaction. Because Baba Batra flows uninterrupted from Baba Mesi'a, the issue of whether and how intentionality plays a role in the conduct of transactions, which is a central concern in Baba Mesi'a, must be considered in understanding Baba Batra.

The concluding third of Baba Mesi'a takes up situations in which intentionality may or may not enter into the adjudication of a case. By contrast, in the opening unit of Baba Batra intentionality plays no role at all. That is to say, joint holders enjoy certain rights in common, and how they personally wish to arrange matters has no bearing in law. Here custom overrides intentionality and the right of the community overrides even agreements among individuals. In these matters the rights of the other must be respected. Even where the owner of a property has not abandoned the hope of recovering the property—even when despair has not nullified his title—he may still lose the property. His neglect of his rights speaks for itself and overrides his intentionality toward the property. In these situations, actions set aside intention: an owner who neglects his property, by his very action, indicates his disinterest in the property.

Lastly, the private understanding or intention of the purchaser is null, if common usage is violated. The buyer may say that he assumed the sale of property encompassed various movables, but that claim is null. People conform to customary usage, including customary language, and they cannot invent their own conditions of sale. The law does not take account of private intentionality. Commonly held stipulations, even when unstated, govern when all parties share the same general view.

When it comes to inheritances, one's intentionality may prevail simply through an act of donation (gifting). When it comes to transferring property through the right of inheritance, however, the oral Torah's law prevails. Personal intention with regard to the distribution of one's estate, that which we today have placed at the very center of dividing an estate, is null.

Overview of the three tractates related to civil law  
The civil law of Judaism is set forth in the three tractates bearing Baba ("gate") in their title, Baba Qamma ("first gate"), Baba Mesi'a ("middle gate"), and Baba Batra ("last gate").

The whole of Baba Qamma takes up the results of wicked intentionality, an act of will that takes the form of malice, on the one hand, or flagrant neglect of one's duties, on the other. The rules of Baba Mesi'a address the situations in which intentionality (1) plays a role, (2) is excluded as irrelevant, and (3) may or may not enter into the adjudication of a situation of conflict. The topics treated in Baba Batra in common with Baba Mesi'a take account of the idiosyncrasy of intentionality and exclude private interest from intervening in customary arrangements.

Seen from this perspective, the entire set of rules forms a sustained essay regarding when and how intentionality gives way before established procedures and usages.

### **Illicit Transactions; Restoring Order**

I. Damages done by chattels (Baba Qamma 1:1–6:6)

II. Damages done by persons (Baba Qamma 7:1–10:10)

III. Disposition of other peoples' possessions; bailments (Baba Mesi'a 1:1–3:12)

IV. Illicit commercial transactions: overcharge, misrepresentation, and usury (Baba Mesi'a 4:1–5:11)

### **Licit Transactions; Preserving Order**

V. Hiring workers; rentals and bailments (Baba Mesi'a 6:1–8:3)

VI. Real estate (Baba Mesi'a 8:4–10:6, Baba Batra 1:1–5:5)

VII. Licit commercial transactions (Baba Batra 5:6–7:4)

VIII. Inheritances and wills; other commercial and legal documents (Baba Batra 8:1–10:8)

### **Tractate Sanhedrin**

Sanhedrin deals with the organization of the Israelite government and the courts and punishments administered thereby. The court system is set forth in the Mishnah's statement of matters (Mishnah tractate Sanhedrin 1:1–5:5), the death-penalty (Mishnah tractate Sanhedrin 6:1–11:6), and extra-judicial penalties (Mishnah tractate Sanhedrin 9:5–6, 10:1–6). The penalties other than capital punishment, that is, perjury

(with variable penalties), banishment, and flogging, are set forth in the next tractate, Makkot.

### I. The court system

- A. Various kinds of courts and their jurisdiction
- B. The heads of the Israelite nation and the court system
- C. The procedures of the court system: property cases
- D. The procedures of the court system: capital cases

### II. The death penalty

- A. Stoning
- B. The four modes of execution that lie within the power of the court and how they are administered
- C. Stoning
- D. Burning or decapitation
- E. Strangulation
- F. Extra-judicial punishment
- G. Death at the hands of Heaven: denial of eternal life

While Scripture supplies many facts, the Talmud organizes matters in its own way. The details of the organization of the court system do not derive from the written Torah, nor are the specificities of the death penalty supplied there. Scripture's contribution is therefore episodic. Deut. 16:18–20 specifies appointing judges and Deut. 17: 8–13 provides for an appellate system. The death penalty for murder is specified in Num. 35:30 and that it must rely on the testimony of two or three witnesses in Deut. 17:6–7. The comparison of the high priest with the king (Mishnah tractate Sanhedrin 2:1–5) rests on Lev. 21:10–12 (for the high priest) and Deut. 17:14–20 (for the king). The death penalty involving hanging the body on a tree until night (but with burial on the same day) is found in Deut. 21:22–23. The death penalty for the stubborn and rebellious son is found in Deut. 21:18–21. The city that is wiped out because of idolatry is treated in Deut. 13:12–18.

Scripture contributes facts for the law in Sanhedrin on specific topics, but the shape and program of the tractate as a whole cannot be predicted on the basis of the Torah.

In its overarching structure tractate Sanhedrin moves from property cases to capital cases.

Then within capital cases Sanhedrin addresses the penalties for catalogued crimes (from the most severe to the lightest crimes). Lastly the law turns to the most severe penalty of all: the penalty that only the Heavenly court can impose.

The auxiliary portion of the tractate then proceeds from capital to corporal punishment.

The order of the whole tractate is:

- (1) the earthly court and property cases;
- (2) the earthly court and capital punishment;
- (3) the Heavenly court; and, then appended,
- (4) corporal punishment.

This order of exposition identifies for us what is at issue when the topic of punishment for criminal acts is addressed. The rabbinic sages approach the topic of criminal justice bearing in mind a profound theological issue: how God's justice is to be done on earth in such a way as to express God's mercy, even for sinners and criminals.

### Tractate Makkot

The penalties other than capital punishment covering perjury (with variable penalties), banishment, and flogging are set forth in tractate Makkot. The penalties for perjury are specified in Deut. 19:15–21, and for flogging in Deut. 25: 1–3.

#### I. Penalties for perjury

#### II. The penalty of exile (banishment)

- A. The conduct of the flogging
- B. Those who are sent into exile
- C. The cities of exile

#### III. The penalty of flogging

- A. Those who are flogged
- B. The conduct of the flogging

Continuing the exposition of Sanhedrin, the tractate Makkot concerns itself with the judicial sanctions of flogging and banishment, with particular interest in matching the crime (or sin) to the penalty.

Sanhedrin and Makkot form a protracted statement. Within Israel's social order the law addresses the profound questions of social justice: What shall we make of the Israelite sinner or



criminal? Does the sin or crime, which has estranged him from God, close the door to life eternal? If it does, then justice is implacable and perfect. If it does not, then God shows his mercy, but what of justice?

We can understand the answer only if we keep in mind that the law takes for granted the resurrection of the dead, the final judgment, and the life of the world to come beyond the grave. From the perspective of eternal life, physical death becomes an event in life but not the end of life. It must follow, therefore, that the death penalty does not mark the utter annihilation of the person of the sinner or criminal. On the contrary, because he has paid for his crime or sin in this life, he is situated with all of the rest of “supernatural” or “spiritual” Israel, ready for the final judgment. Having been judged, he will “stand in judgment,” meaning, having been judged and punished in his material life he will find his way to the life of the world to come along with everyone else. Within the dialectics formed by those two facts (of belief)—punishment now and eternal life later on—we can identify as the two critical passages in the law, Mishnah tractate Sanhedrin 6:2 where Achan pays the supreme penalty but secures his place in the world to come, and Mishnah tractate Sanhedrin 10:1. In the latter text, all Israel, explicitly including all manner of criminals and sinners with only a few exceptions, is going to stand in judgment and enter the world to come.

That is what defines the stakes in this critical component of the sages’ understanding of God’s abode in Israel. What the law wishes to explore is how the Israelite sinner or criminal may be rehabilitated through the criminal justice system, so as to rejoin Israel in eternity. The answer is that the criminal or sinner remains Israelite no matter what he does, even if he experiences the death penalty exacted by the earthly court.

The law of Sanhedrin-Makkot embodies three religious principles. First, Israel endures for ever and encompasses (nearly) all Israelites. Second, sinners or criminals are able to retain their position within that eternal Israel by reason of the penalties paid before earthly courts—penalties that expiate the specific sins or crimes spelled out by the law. Third, an act of merciful justice is done when the sinner or criminal is put to death, for at that point by this punishment he is assured of eternity along with everyone else. God’s justice comes to full

expression in the penalty, which is both instrumental and contingent. God’s mercy endures forever in the forgiveness that follows the expiation of guilt through the imposition of the death penalty.

### Tractate Abodah Zarah

The law of idolatry takes as its task the negotiation between Israelites and the pagan world in which they live: how Israelites are to conduct themselves so that at no point and in no way do they give support to idolatry. In its basic exposition ‘Abodah Zarah rests squarely on the foundations of Scripture, supplying rules and regulations that carry out the scriptural commandments about destroying idols and everything that has to do with idolatry. But it formulates matters so as to transform the entire topic of idolatry into an essay on Israel’s relationships with the Gentiles, who are idolaters by definition.

#### I. Commercial relationships with Gentiles

- A. Festivals and fairs
- B. Objects prohibited even in commerce
- C. Objects prohibited for use but permitted in commerce

#### II. Idols

- A. General principles
- B. The asherah
- C. The merkolis
- D. Nullifying an idol

#### III. Libation wine

For the written Torah idolatry is not to be tolerated. In its Land Israel is to wipe out idolatry, even as a memory. Scripture is clear that Israel is to obliterate all mention of idols (Exo. 23:13). They are not to bow down to Gentiles’ gods nor serve them, but they are to overthrow them and break them into pieces (Exo. 23:24): “You shall break down their altars and dash in pieces their pillars and hew down their Asherim and burn their graven images with fire” (Deut. 7: 5, 25–26).

Scripture’s law does not contemplate Israel’s co-existing in the Land with Gentiles and their idolatry. But the law of ‘Abodah Zarah speaks to a world that is not so simple. The Land belongs to Israel, but Gentiles live there, too—and run things. And Israel no longer forms a coherent collectivity

but a realm made up of individuals each with his particular interests. 'Abodah Zarah commences its treatment of the subject with the opposite premise: Gentiles live side-by-side (whether or not in the Land of Israel) with Israelites, and Israelites have to sort out the complex problems of co-existence with idolatry. That co-existence involves not whole communities, the people Israel and the peoples, whoever they may be, but individuals, individual Israelites living side-by-side with Gentiles. The law deals with commercial relationships, matters pertaining to idols, and finally to the particular prohibition of wine, part of which has been served as a libation to an idol. The whole is regularized and ordered. There are relationships with Gentiles that are absolutely prohibited, particularly occasions of idol-worship, which are complicated, as we shall see, because the law recognizes that these occasions are major commercial events. When it comes to commerce with idolaters, Israelites may in some instances not sell or in any way benefit from certain things. In other instances they may sell but not utilize certain other things, and in some instances they may both sell and utilize still other things.

Here, we discover quickly, the complex and systematic mode of the sages' thought that governs the law's treatment of the topic vastly transcends the rather simple conception that animates Scripture's discussion of the same matter. There are three unstated, but vital, premises which guide the law in 'Abodah Zarah. First, that which a Gentile is not likely to use for the worship of an idol is not prohibited. Second, that which may serve not as part of an idol but as an appurtenance thereto is prohibited for Israelite use but permitted for Israelite commerce. Third, that which serves idolatry is prohibited to the Israelite both for use and for benefit. In relationships with the Gentiles (meaning, idolaters), the law takes for granted a number of facts that yield a single generalization: Gentiles, like all idolaters, are assumed routinely to practice bestiality, murder, and fornication.

### Tractate Horayot

Horayot, which is centered on Lev 4, is a companion to tractate Shebu'ot, which is centered on Lev 5–6. The law in Horayot deals with collective sin and its atonement, particularly addressing the erroneous decisions made by

instruments of government or self-constituted collectivities, e.g., the town that goes astray through idolatry, as distinct from erroneous decisions made by individuals. Scripture makes provision for the collective expiation of guilt incurred on account of collective action effected through public institutions or instruction of government. The Torah refers to this as a sin committed in error. Lev. 4: 1–5, 4:13–21, 4: 22–26, and Num. 15:22–29, all deal with such situations.

The law of Horayot pertains to the consequences of following an erroneous instruction which ensues when a court instructs the community to do something that should not be done. Cultic penalties are specified in Lev. 4: 1–5 for official instruction that is in error and the consequent sin of the anointed priest. Lev. 4:13–21 addresses what is to be done when the entire congregation errs. Lev. 4:22–26 deals with the inadvertent sin of the ruler.

Finally, Num. 15:22–29 addresses dealing with the unwitting sin of the entire community; the deliberate sin of the entire community, in the instance of idolatry, already having been taken up elsewhere.

- I. The offering brought because of an erroneous decision by a court
- II. The offering brought by the high priest who has unwittingly done what is contrary to the commandments of the Torah; the ruler
- III. The individual, the anointed priest, and the community

Whether ruler, high priest, or people, all are subject to the sanction invoked by this unwitting sin which was caused by the erroneous ruling of the court. Interstitial issues—did the court and the public act together, did the court issue the ruling while the public carried it out, and the like—are addressed in the oral Torah's contribution to the law. The court, the ruler, and the high priest embody the community at large, the body of political institutions that, each in its own realm, bears responsibility for the whole. This tripartite division of political power dictates the organization of the exposition before us. As usual, the center of interest is divided between the crime and its penalty.

What triggers the application of the collective penalty provided by the law of Horayot is the community's reliance upon the court. He who relies on himself is liable, and he who relies on the court is exempt. Here is a case, then, in which "he told me to do it" represents a valid claim, but the case is carefully restricted. The law ordinarily does not accept such a claim, as is noted in the explicit statement that ordinarily no one can blame a third party for damages he causes.

It is when the court speaks in the name of the Torah erroneously that the individual is exempt. Even here the conditions under which such a claim may be made are narrowly defined. The only case in which the community at large does not deliberately violate the Torah and incur the penalty of death now and the loss of eternity at the last judgment involves erroneous instruction on the part of the court. Then, when an individual sins in ignorance, he is exempt from penalty, having relied on the court. Even though an individual knows the law, if he relies upon the court, he is exempt. The court is liable. But the error of the court must pertain to details, not to the basic rule, which the court (and the individual) is expected to know. The individual, as much as the community, bears responsibility to know the Torah's explicit laws. Inadvertent errors in detail alone based on court instruction allow the individual to assign guilt to the community at large. Under those conditions the Scripture then provides for a means of expiating the collective sin.

Inadvertence, however, pertains both to the community and to the court, so a range of possibilities is considered in Horayot. For example, the court may give an incorrect decision inadvertently, and the entire community followed their instruction and did the thing in error. Or the court may give an incorrect decision deliberately, but the community, following their instruction, did the thing in error inadvertently. Or the court may give incorrect instruction inadvertently, and the community followed their instruction and did the thing in error deliberately, and so on.

### Tractate Shebu'ot

Shebu'ot covers two distinct topics: imparting uncleanness to the sanctuary and its Holy Things, and oaths. These subjects are joined by reason of the written Torah's formulation of such matters;

the focus in the Scripture is on common penalties for diverse sins or crimes. Shebu'ot sets forth penalties remedied through sacrificial offerings, particularly the guilt-offering required in Lev 5–6. The principal occasion for a guilt-offering is the violation of an oath or a transgression against a bailment. Lev. 5: 1–6 addresses three matters; the oath of testimony, the case of one in the cult who touches what is unclean, and the rash oath. All require a guilt-offering. Lev. 6: 1–7 addresses atonement for bailments in which a false oath has been taken.

I. The uncleanness of the cult and its holy things and the guilt-offering

- A. General introduction
- B. Uncleanness and the cult

II. Oaths

- A. Oaths in general
- B. The rash oath, the vain oath
- C. The oath of testimony
- D. The oath of bailment
- E. The oath imposed by judges
- F. Oaths and bailments

Shebu'ot, the law of oaths, defines types of oaths and the counts, or charges, on which, in the taking of an oath that turns out to be false or that is violated, one incurs culpability.

The first issue concerns the assessment of the divisibility: How many counts of guilt does one incur by the violation a single oath by multiple acts? The answer derives from a close reading of the language that is used in the oath itself. If the oath is partitive, treating each component ("wine, oil, and honey") of the oath as distinct, one is culpable for each action in violation of one of the terms of the oath. If the language is inclusive, treating a variety of categories as a group ("many different beverages"), all actions related to the group fall into the same classification and are penalized under a single count.

From rules pertinent to all oaths, Shebu'ot moves on to subdivide oaths into four categories: rash oaths, vain oaths, oaths of testimony, and oaths of bailment. A separate category of oaths, those imposed by the judges as part of a court proceeding, is taken up in due course. These four principal types of oaths obviously fall into two

distinct categories as well, the first two being oaths of a private character, the latter two oaths involving public policy; that is, oaths taken in the courts, and oaths taken for the protection of property. Once more Shebu'ot distinguishes between the inadvertent taking of such an oath, in which case an offering suffices for punishment, and deliberately doing so, in which case the sanction is corporal. Taking the first two types of oath is itself culpable. In the latter two cases, it is the violating of the oath or the taking of the oath under false pretenses that is culpable. This is an important difference. The rash or vain oath is a general statement while the oath of testimony or of bailment must by its very nature be particular to the case at hand. One is not penalized for taking a true oath of testimony or oath of bailment, but one is automatically subject to sanctions for taking a rash or a vain oath. That difference accounts also for the character of the rules that define how the law is applied, whether to men, women, relatives, or others. Oaths pertaining to the court matter only when taken by those qualified to give testimony, e.g., by men not women, by unrelated parties not relatives of the litigants, and the like. That also explains why for these categories of oaths only taking a false oath is penalized. In these cases, too, the oath must be particular to the case, that is, it is imposed on specific, named persons.

### Tractate Zebahim

In connection with animal offerings, the law in Zebahim addresses the role of intentionality in the sacrificial cult, an issue not explicitly addressed in Scripture's treatment of the same subject but deemed by the sages to be implicit therein. It also encompasses issues systematically addressed in the law's examination of a broad variety of topics, e.g., issues related to the mixture and confusion of categories, rules of precedence, and the like.

Scripture supplies the facts that the law in Zebahim systematizes. Finally, while Scripture does not differentiate among the locations where the altar was located, Zebahim systematizes information available about the location of the altar and deals with the diverse rules governing sacrifices at the several locations at which Israel made offerings prior to the building of the Temple. The entire enterprise of Zebahim proves to be one of generalization and systematization, but at the

same time, the law contains within itself remarkably fresh initiatives of inquiry.

I. Improper intention and invalidating the act of sacrifice

II. The rules of sacrifice of beasts and fowl

A. Beasts

B. Fowl

III. The rules of the altar

A. Disposing of sacrificial portions or blood that derive from diverse sacrifices and have been confused

B. The altar sanctifies what is appropriate to it, but not what is not appropriate to it

C. Precedence in use of the altar

D. Blood of a sin-offering that spurts onto a garment

E. The division among the eligible priests of the meat and hides of sacrificial animals

IV. The proper location of the altar and the act of sacrifice performed thereon Of the issues that predominate in the law of Zebahim—especially the role of intentionality in linking God and Israel—Scripture states little or nothing. But wherever they can, the law's sages find in Scripture the starting point for their own systematic reflection. For its part, Scripture's governing provisions for animal offerings are set forth at Lev. 1: 1–9, 1:14–17, 3:1–5, 4:27–31, 6:27–28, 7:1–7, and 17:3–16.

The main focus of the law in Zebahim is not to differentiate types of offerings but to homogenize. What rules apply to all classes of offerings on the altar? While Scripture presents the transaction that takes place at the altar by classifying types of offerings, e.g., the burnt-offering, sin-offering, guilt-offering, peace-offerings, firstling, tithe of cattle, and the Passover offering, Zebahim forms its own classifications, setting forth rules that apply to all (or most) classes of offerings throughout. Thus the law in Zebahim systematizes by identifying the four cultic acts that, properly performed by the priest, render the animal sacrifice suitable for yielding parts for the altar fires and parts for the priests' consumption. These are

(1) the act of slaughtering the beast,

(2) the act of collecting the blood from the neck of the beast in a utensil of service,

(3) the act of bringing the blood to the altar, and

(4) the act of tossing drops of blood on the altar.

These four acts pertain to all classifications of offerings of beasts. To all classifications of offerings of fowl two apply:

(1) pinching the head of the bird from the body and

(2) draining the blood out onto the altar.

In addition to these laws, since priests eat part of the offering, Zebahim provides rules governing how they prepare and eat their portion.

### Tractate Menahot

The written Torah specifies numerous offerings of grain, wheat, or barley, and these numerous offerings serve diverse occasions. Menahot homogenizes these. It affords recognition only to two distinct grain offerings; the offering of the first barley ('omer) of the new agricultural season (from the advent of the full moon of the month Nisan through Pentecost) and the two loaves and show-bread placed on the altar at Pentecost. All of the other diverse meal-offerings are encompassed within a common set of rules. These impose modes of differentiation, in the place of Scripture's.

I. Reprise of the principles of Zebahim on improper intention and the invalidation of meal-offerings

A. Reprise of Zebahim

B. Other rules of invalidation of meal-offerings

II. The proper preparation of meal-offerings

A. General rules

B. The meal-offering that accompanies the thank-offering

C. Sources of flour, oil, and wine used for the meal-offering

D. Measuring the materials used for the offering

III. Special meal-offerings

A. The 'omer

B. The two loaves of Pentecost and the show-bread

IV. Vows in connection with meal-offerings

Menahot specifies five classes of votive cereal offerings:

(1) a meal offering of fine flour; a meal offering baked in the oven in two forms,

(2) cakes and

(3) wafers;

(4) a meal offering made in a griddle; and

(5) a meal offering made in a pan.

All are subject to the same governing regulations: a tenth ephah of fine flour and a log of oil. The principal pertinent verses of Scripture are these: Lev. 2: 1–13, 6:14–18, and 7:9–10. Obligatory meal offerings, in addition, include these: the meal offering of a poor sinner by reason of the sins specified (Lev. 5:11–13); the meal offering of jealousy, presented by the woman accused of adultery (Num. 5:15); the meal offering of the anointed priest or the cakes of the high priest presented every day (Lev. 6:13–16); the meal offering brought with drink offerings along with whole offerings of peace-offerings brought by reason of vows or as votive offerings (Num. 15: 2–16), with daily whole offerings and additional offerings (Num. 28: 5), with the whole offering of a bullock (Num. 15:24), with the offerings of a Nazirite (Num. 6:15), with the offerings of the 'omer (first barley) and with the two loaves of show-bread (Lev. 23:13, 18); with the offerings of the person healed of the skin ailment (Lev 14:10); with the two loaves and the show bread (Lev. 23:15–17, 24:5–9); and so on.

For its part, the law of the Mishnah and the Talmud proceeds from the general to the differentiated. First of all, the law sets forth rules for meal-offerings of all categories and classifications, however prepared and for whatever purpose. Second, it turns to general rules for the presentation of meal-offerings, e.g., the source for the grain, oil, and wine; the character of the measuring cups that are used for them all; and the like. It turns, third, to the special public offerings, the 'omer and the counterparts for Pentecost. At the end, Menahot reviews the language that is used for vows for votive offerings, and how that language is to be interpreted.

## Tractate Hullin

The subject of tractate Hullin, (secular food, that is, food not destined to the altar or to the priesthood), is the proper modes of killing and dividing the animals that are used for meat at home. Most of the rules for slaughtering an animal for God's table apply also to slaughtering one for the Israelite's own table. Food taboos pertinent to the preparation of meat cover the law against slaughtering the dam and its young on the same day; the requirement to cover up the blood of the slaughtered beast; the taboo against the sciatic nerve; cooking meat with milk; and food-uncleanness with special reference to connection.

Two chapters address what is owed to the priest from the meat of animals slaughtered at home for secular purposes; the gift of first fleece to the priest; and the law of letting the dam go from the nest when one takes the eggs.

### I. Rules of slaughtering unconsecrated animals for use at home or in the Temple

- A. General rules of slaughter
- B. Specific regulations. Terefah-rules
- C. Slaughter and illicit sacrifice
- D. Terefah and valid carcasses
- E. The affect of valid slaughter on the parts of a beast's body, e.g., on the fetus

### II. Other rules governing the preparation of food, principally for use at home

- A. Not slaughtering "it and its young" (Lev. 22:28)
- B. The requirement to cover up the blood (Lev. 17:13–14)
- C. The prohibition of the sciatic nerve (Gen. 32:32)
- D. The separation of milk and meat (Exo. 23:19, 34:26, Deut. 12:21)
- E. Connection for the purposes of contracting uncleanness
- F. The gifts to the priest taken from a beast slaughtered for secular purposes: the shoulder, two cheeks, and maw (Deut. 18: 3)
- G. The gift to the priest of the first fleece of a sheep (Deut. 18: 4)
- H. Letting the dam go from the nest when taking the young (Deut. 22: 6–7)

A very specific problem confronts the Hullin, namely, the relationship among the three realms of sanctification:

- (1) the holy Land,
- (2) the Temple, and
- (3) Israel the people.

The law repeatedly states in so many words what it wants to know: Does

- (1) the destruction of the Temple and cessation of the offerings,
- (2) the degradation of the Land of Israel, and
- (3) the exile of the holy people, Israel, from the Holy Land, affect the rules of sustenance in the scriptural model of the nourishment of God in the Temple in the Land among the holy people?

Hullin's answer is that whatever the condition of the Temple and its altar, whatever the source of animals whether from the Holy Land or from unclean Gentile lands, and whatever the location of Israel whether dwelling in the Land or not, one thing persists.

The sanctification of Israel, the people, endures (1) in the absence of the cult,

- (2) in alien, unclean territory, and
- (3) whatever the source of the food that Israel eats.

Israel's sanctity is eternal, un-contingent, and absolute. The sanctification that inheres to the people, Israel, transcends the Land and outlives the Temple and its cult. Since the sanctity of the people, Israel, persists beyond the Temple and outside of the Land, that sanctity stands at a higher point in the hierarchy of domains of the holy that ascend from earth to heaven and from humankind to God.

In order to make its statement about the eternal sanctification of the people, Israel, explicit, Hullin responds to three facts. First, Israelites live not only in the Holy Land but abroad, in unclean land. Second, the Temple has been destroyed. Third, consequently, animals are slaughtered not only in the Temple in the Land but in both unconsecrated space and abroad, and the meat is eaten in both cultic and in profane circumstances. The law that applied to the Temple and the home when the Temple was standing and Israel occupied the Land

of Israel continues to apply with the Temple in ruins and Israel in exile.

Although the sanctity of the Temple stands in abeyance, the sanctity of the Israelite table persists; although Israel is in exile from the Holy Land, Israel remains holy; although rules of uncleanness are not now kept in the Temple, they continue in force where they can be kept. Birds and animals that flourish outside of the Land when prepared for the Israelite table are regulated by the same rules that apply in the Land and even (where relevant) at the altar. So Israel, the people, not only retains sanctity but preserves it outside of the Land, and the sanctity of Israel as a people transcends that of the Temple and its altar.

### Tractate Bekhorot

Bekhorot addresses the law with respect to the firstborn. The pertinent verses of the written Torah began with the most general command covering the firstborn whether of man or of beast: it is to be redeemed (Exo. 13: 2). The firstborn of man and of unclean beasts are redeemed with money and the proceeds assigned to the priests. The firstborn of clean beasts is slaughtered in the Temple court and the meat goes to the priest (Num. 18:15–18).

If the firstborn of a clean beast is blemished, it is given to the priest who may eat it anywhere, sell it, or give it away as his own property (Deut. 15:21–22). One must sanctify the firstling of an ox and declare it holy (Deut. 15:10). Firstlings may not be brought to the Land from outside (Deut. 14:23). A firstling must be eaten during its first year, whether blemished or otherwise (Deut. 15:20–22). What renders a firstborn animal unfit for the altar is what also renders a priest unfit for service; this is a sign of the comparability of the firstborn and the priesthood. As to blemishes that disqualify priests for service at the altar, Scripture rejects blemished persons and blemished firstlings (Lev. 21:18–20). The Torah encompasses, also, the tithe of the herds and the flocks (Lev. 27:32–33).

- I. The firstborn of animals: general rules
  - A. The firstborn of an ass
  - B. The first-born of a cow
  - C. The resolution of matters of doubt
  - D. Not shearing the firstling

- E. The requirement to tend the firstling before handing it over to the priest

- II. Slaughtering a firstling by reason of blemishes

- A. Examining a firstling to see whether or not it is blemished
  - B. Further rules of slaughtering the firstling
  - C. Blemishes in animals
  - D. Blemishes in priests

- III. The firstborn of man

- IV. Tithe of cattle

In the law of Bekhorot God's claim on the fruit of the womb is made as soon as the offspring, human or animal, emerges. Upon its birth the firstling is holy, set aside, belonging to God and hence set aside for the priesthood. In the case of a male child it must be redeemed and in the case of an animal it must be otherwise disposed of. Firstlings derive only from flocks and herds in the Land, while the increase of overseas herds and flocks are supposed to be tithed. Since both firstling of the Land and the tithe of herds from overseas are destined to the priesthood, the difference lies in provenience. The fact that they are owned by Israelites makes them eligible for tithing without regard to where they are raised. When it comes to setting aside the firstborn, whether animals or people, what governs is that their derivation is from Israel, not that they are actually located in the Land of Israel.

In contrast to the offerings of the firstfruits, which are obligatory only for Israelite landholders, firstlings must be presented by all Israelites who own herds and flocks wherever they are located. And all Israelite firstborn male children, wherever they are born, must be redeemed. The source of sanctification is personal and therefore utopian, not dependent upon possession of the Land. Here the realm of sanctification derives from genealogy, not from geography. The birth of a male child to an Israelite father and mother (within the qualifications that the law sets forth) imposes the liability of redemption upon the father just as the birth of animals to an Israelite owner imposes the liability to tithe the increase of the herd or flock.

Note the contrast of the offerings of firstlings (firstborn) to the obligation for firstfruits where what is required is the offering of just those species raised in the Land and where who is obligated to make the offering is the Israelite who

possesses a share in the Land and who is also of the people, Israel. A more striking contrast would be difficult to locate than the one that differentiates the offering of the firstfruits and the redemption of the firstborn of man and beast, on the one hand, and the obligation to tithe herd and flock, on the other.

### Tractate Arakhin

Scripture provides at Lev. 27: 1–8 that people may take a “special vow of persons,” pledging the value of a given person, whether oneself or another, to the Temple. The value of persons or real estate is estimated, and the cash paid to redeem the person or property from the sanctuary goes to the Temple for its upkeep. Scripture explicitly makes provision for such votive offerings of personal worth, specifying the requisite number of shekels that measure the worth of a person of a given classification. For an adult male, it is one hundred times the half-shekel paid annually; for an adult female, sixty; and so on. But those who sanctify their own value and cannot pay the fixed sum may be subjected to an individual evaluation. When it comes to real estate, the law focuses upon the disposition of real estate received by inheritance, that is, real estate assigned to a specific party in the original, perfect division of the Land at the time of Israel’s first entry into the Land. Both personal valuations and dedications of real property—fields and houses under specified circumstances—represent donations to God through the Temple and the priesthood.

#### I. Valuations and vows for the benefit of the Temple

- A. Basic rules
- B. Special rules
- C. Ability to pay in assessing vows
- D. The difference between pledging a valuation and vowing the worth, or price, of someone or something
- E. Collecting valuations

#### II. The dedication and redemption of a field that has been received as an inheritance

#### III. The devoted thing (herem)

#### IV. The sale and redemption of a field that has been received as an inheritance and of a dwelling place in a walled city

In every case ‘Arakhin deals with statements of sanctification of a person or some thing of worth to the Temple. A person may sanctify himself or his property, or he may sanctify the worth of another party, and in either case is obligated to pay to the Temple the value of what he has declared sacred. That payment represents the process of “redemption.” Such statements apply even to a portion of the value of the person:

[If someone said,] “The head of this slave is sanctified,” he [the owner] and the sanctuary are partners in [owning] him.

“The head of this ass is sanctified,”—he and the sanctuary are partners in [owning] it.

The process of redemption regularizes the matter.

All normal Israelites, capable of an informed statement of intentionality, including women and slaves, may pledge the valuation of third parties and may be subjected to such a pledge of their worth by third parties. Since the pledge is one of volition, and since Gentiles may sanctify offerings for thanksgiving or free-will donations to the cult, they may also pledge the value of others and are subject to such a vow. The minimum payment of a vow of valuation (Lev. 27: 8) is a sela according to ‘Arakhin and the maximum payment, fifty sela. In addition to the vow of valuation, fixed by the Torah, the vow of personal worth further individuates. Vows to pay the value apply to anything, man or beast, live or slaughtered beasts, whole persons and limbs, and the ability to pay is not an issue. The individual is singled out as to his or her actual traits. One may vow to give his weight to the sanctuary, even in silver or in gold. He may pledge to give the worth of his hand, in which case he pays the difference between his value with, and without, a hand. If one pledges his own valuation and dies, his estate pays; the obligation takes effect forthwith. If he pledges his worth and dies, the estate pays nothing.

### Tractate Temurah

Israel relates to God at the altar in such a way that God hears and responds to Israel’s declaration of intentionality. For example, God hears and responds to a person’s intention and desire to sanctify a given animal for a specified sacred purpose. Can Israel then change its mind, using the words of sanctification to revise the classification of an already classified beast? Is it possible, for



example, for Israel, endowed after all with the power to use words to classify beasts for holy purposes, to change its mind, substituting one animal for another, sanctified one? Building upon Scripture, the law of Temurah underscores the limitations that God sets upon Israel's command of transformative language. Once the Israelite has made a statement, he cannot nullify it; nor can he change his mind, declaring profane a beast designated as holy and replacing that beast with some other. Scripture is explicit that the beast designated as a substitute becomes holy and the beast that was already consecrated remains holy (Lev. 27:10).

- I. The rules of substitution: who may substitute, and to what end
  - A. Liability to the law of substitution
  - B. Exemptions from the law of substitution
  - C. The individual's offerings are subject to the law of substitution; those of the community are not
- II. The status of the offspring of substitutes
  - A. Diverse sacrifices, their substitutes and offspring
  - B. The supererogatory sin-offering
- III. The language used in effecting an act of substitution
- IV. Formal appendix

The law of the Torah itself contains few complications. If one sanctifies a beast to the Temple, that act of sanctification is indelible. One may not substitute an unconsecrated beast for a consecrated one, e.g., intending to deconsecrate the consecrated beast by the replacement. If one does so, the beast designated as a substitute takes on the status of the consecrated beast and is itself sanctified, while the beast for which the substitute was identified retains its status as holy. Lev. 27: 9–10 states the law in so many words: "If it is an animal such as men offer as an offering to the Lord, all of such that any man gives to the Lord is holy. He shall not substitute anything for it or exchange it, a good for a bad or a bad for a good; and if he makes any exchange of beast for beast, then both it and that for which it is exchanged shall be holy." It follows that acts of sanctification of animals to the Temple take effect at a second remove.

The law of Temurah makes the point that the status of sanctification is not only indelible but immutable. Once a beast has been declared holy, within the regulations of sanctification it remains so until properly secularized, and once it has been declared holy in a given status, e.g., Most Holy Things, that status is immutable and cannot be revised to the one of lesser Holy Things. The initial act of dedication endures. The language that effects the act of sanctification produces that change in classification that turns the common into the holy, and once spoken, the words work.

The sages raise the question: What if one proposes to substitute a secular beast for a holy one? Such an exchange not only produces no result as to the status of the already-holy beast, but it also imparts the status of sanctification to the beast declared holy as a substitute. As the Torah insists, the holy one then serves as a governing metaphor: the secular beast becomes like, enters the status of, the already-holy beast. But the already holy beast does not lose its status of sanctification.

### Tractate Keritot

Like Sanhedrin and Makkot, Keritot concerns atonement for sin or punishment for crime.

But here, instead of fines, capital punishment, or flogging, what is required is either a sin offering or a suspensive guilt-offering (extirpation). What is the difference between the sin-offering and extirpation? Man bears responsibility for what he does; the law provides the opportunity to atone for doing what God has commanded not to be done. The Torah explicitly imputes guilt even for actions committed inadvertently, those done without the intention of violating the Torah. It follows that the law has to provide for penalties to expiate sin or crime, whether deliberate or otherwise. Here making its statement concerning the taxonomic power of intentionality, the law distinguishes deliberate from inadvertent sin or crime. A sin-offering is required in the case of an action, the deliberate commission of which is penalized by extirpation (early death, before the age of 60), and a suspensive guilt-offering in the case of doubt. The principal interest then is in animal offerings that expiate sin. The Scripture contributes to the topic (Lev. 5:17–19).

- I. The sin-offering

A. Classes of transgressions that are subject to extirpation or the sin-offering

B. The sin-offering

II. Multiple sin-offerings: the single sin-offering and multiple sins

III. The suspensive guilt-offering

A. Cases of doubt in which the suspensive guilt-offering is required

B. When the animal designated for the suspensive guilt offering may not be required

Three sections make up the topical presentation. The first covers those occasions on which the sin-offering or extirpation, as the case may be, is required. The second section addresses a single sin-offering and multiple sins. The third deals with the suspensive guilt offering, which is required where one inadvertently may or may not have committed a sin.

The order is logically necessary, since the suspensive guilt-offering cannot come before the sin-or guilt-offering, which is offered for what one is certain he has done.

Offerings expiate those sins that are not committed as an act of rebellion against God. God graciously accepts these offerings, as an appropriate act of atonement for an act for which one bears responsibility but which was not meant as defiance of God. Those actions that embody an attitude of rebellion, by contrast, can be expiated not through the surrogate, the blood (life) of an animal, but through the life of sinner himself. The rebel is put to death by the court here on earth, cut off in the prime of life, or is flogged by the court's agents.

The religious principle that pervades Keritot is simple: God sees into man's heart. That is why the same act may result in diverse consequences. Those consequences are based upon the intentionality with which the act is done. Indeed, in its own way that same concept animates the discussions on how many sin-offerings are owed by the transgressor for a single action or how many actions may be subsumed under, and expiated by, a single sin offering.

Beyond Keritot, the matter is expressed best in the law of Shabbat where it is made explicit: A sin is atoned for by a sin-offering only when the act is inadvertent. A deliberate action is not covered.

“This is the general principle: All those who may be liable to sin offerings in fact are not liable unless at the beginning and the end their [sin] is done inadvertently.

[But] if the beginning of their [sin] is inadvertent and the end is deliberate, [or] the beginning deliberate and the end inadvertent, they are exempt—unless at the beginning and at the end their [sin] is inadvertent” (Mishnah Tractate Shabbat 11:6J–L).

### Tractate Me'ilah

From the moment that an animal is designated as an offering (“sanctified”), the sacrificer—the one who benefits from the offering, as distinct from the sacrificer, the one who carries out the rite—may make no use of the beast. What happens when Holy Things unintentionally are used for ordinary purposes, that is, what happens when God's property is used for the common Israelite's benefit? If the sacrilege was not deliberate, the value received must be returned, along with a penalty of a fifth more; no further penalty is imposed (Lev. 5:15–16) The law in Me'ilah lays stress on the phrase, “through error.” The law rests upon the principle that people do not deliberately steal from God. The law does not conceive “the Holy” to inhere in such a way that sacrilege of an unintended character bears the same dire results as sacrilege which is intended. The governing distinction is in line with the principle that sanctification is not a matter of substance, but of status.

I. Sacrilege committed against sacrifices in particular

A. When the laws of sacrilege apply to an offering

B. Stages in the status of an offering: the point at which the laws of sacrilege apply to various offerings

C. Cultic property that is not subject to sacrilege but that also is not to be used for non-cultic purposes

II. Sacrilege of Temple property in general

A. Sacrilege has been committed only when the value of a perutah of Temple property has been used for secular purposes

B. Sacrilege is defined by the one who does it or by the thing to which it is done

C. Sacrilege effects the secularization of sacred property

D. Agency in effecting an act of sacrilege

The premise of the law rests on an understanding of Israel's proper intentionality.

Israelites are assumed not to wish to appropriate for their own use what belongs to God and will not intentionally do so. If they err, and realize it, they make amends. In this way they make manifest their correct attitude; they realize and embody by their actions what the sacrificial process is meant to nurture: their full and free acceptance of God's dominion.

God responds to right intention with its counterpart, graciousness. That is why he readily gives up what is his. Once the priest has a right to part of an offering, God's claim to the offering is set aside, and sacrilege no longer pertains. As a result, the act of sanctification effects a change in the status of what is sanctified, though only for a limited period and for a highly restricted purpose. In imposing such a narrow construction to the matter of sacrilege—the inadvertent misuse of what God alone may use—the law underscores a now-familiar principle. Sanctification is related to Israel's condition and is not intrinsic to the condition of what is consecrated. How better to demonstrate this principle than by treating as secular what was once subject to sacrilege?

Balancing sacrilege against sanctification, Me'ilah weighs what is done by inadvertence against what is done with full deliberation. The act of sanctification vastly outweighs the act of sacrilege. That is because by the Torah's definition, sacrilege subject to an atoning offering takes place by inadvertence, not by an act of will. Sanctification, by contrast, comes about by an act of praiseworthy will. The law has not only recapitulated the familiar notion of sanctification as a matter that is relative to circumstance, it has also made an eloquent statement that in the cult Israel relates to God in full sincerity. The occasion of unintended sacrilege, its discovery and atonement, match the moment of sanctification. Its disposition of both transactions underscores what the law finds important in the meeting of God and Israel at the altar: Israel's exemplary love and loyalty to God.

## Tractate Tamid

The daily whole offering, Tamid, is set forth at Num. 28: 3–4: "This is the offering made by fire that you shall bring to the Lord: male lambs of the first year, unblemished, two each day, for a continual burnt-offering. One lamb you shall offer in the morning, the other lamb you shall offer at dusk." The Mishnah narrates the rite, and the Talmud glosses the Mishnah:

I. The priests arise in the morning and clear the altar of ashes

A. The priests in the morning

B. Clearing the altar

II. Selecting the lamb for the daily burnt-offering

III. Clearing the ashes from the inner altar

IV. Slaughtering the lamb

V. Blessing the congregation, placing the lambs on the altar

A. Prayer: a blessing, the Ten Commandments, and a blessing

B. Carrying the lambs to the altar

VI. Clearing the ashes and disposing of them

VII. Tossing the lambs on the altar

What is at issue in the daily whole-offering? The Tosefta makes explicit what is at stake in the matter:

They exact pledges from Israelites for their shekels, so that the public offerings might be made of their [funds]. This is like a man who got a sore on his foot, and the doctor had to force it and cut off his flesh so as to heal him. Thus did the Holy One, blessed be he, exact a pledge from Israelites for the payment of their shekels, so that the public offerings might be made of their [funds]. For public offerings appease and effect atonement between Israel and their father in heaven. Likewise we find of the heave-offering of shekels which the Israelites paid in the wilderness, as it is said, And you shall take the atonement money from the people of Israel [and shall appoint it for the service of the tent of meeting; that it may bring the people of Israel to remembrance before the Lord, so as to make atonement for yourselves] (Exo. 30:16).

So what the daily whole offering purchased by the half-shekel accomplishes is to form of all Israel a single entity before God: all have sinned, all atone,

together. Of this, the law of Tamid knows nothing. Here is a case in which free-standing law bears no message beyond its own information, answers no question through the provision of its data. Tamid represents a category that does no more than amplify and clarify a topic introduced by Scripture. Scripture has offered a premise of considerable promise: the daily whole offering atones for all Israel. The one noteworthy point—the introduction of canonical prayer into the Temple rite in the fifth section—registers its presence but leads nowhere.

### Tractate Niddah

Scripture is explicit that sexual relations may not take place during the menstrual period (Lev. 15: 1–33). When it comes to menstrual uncleanness the main problem comes at the start of the period. In the clean or “Zibah-days” (when any blood that is excreted is classified as *zob*), the woman may have sexual relations without scruple; as soon as the menstrual cycle commences, however, a single drop of blood marks the change in her status to that of a menstruant. The law of Niddah addresses how to deal with cases of unclarity as to the exact point at which the period has begun, with special reference to the status of the man who is engaged in sexual relations with the woman at that moment. It is that interstitial period that defines the topic of the law of Niddah.

#### I. Retroactive contamination

#### II. Unclean excretions

- A. Unclean blood
- B. The status of abortions as to uncleanness
- C. Samaritan, Sadducee, and Gentile women
- D. The status of blood produced in labor
- E. Status of blood in the Zibah-period
- F. The Point at which unclean fluid imparts uncleanness

#### III. Rules applicable at various ages

#### IV. Doubts in connection with unclean excretions

- A. Bloodstains and other matters subject to doubt
- B. Blood of menstruating women, the flesh of a corpse impart uncleanness whether wet or dry, the *Zab*'s only when wet

C. Doubts about the dead creeping thing, the bloodstain

D. Bloodstains [doubtfully-unclean blood] of Israelites, Gentiles, and Samaritans

E. Doubts about bloodstains and drops of blood

F. The fixed period

#### V. Concluding miscellanies

A. Doubts about cleanness when one has failed to examine herself

B. Uncleanness of the *Zab*, of the menstruating woman

C. Status of a woman in the period of purifying after childbirth

D. She who produces blood on the eleventh day of the *Zibah*-period

Tractate Niddah sets forth law on the uncleanness of certain vaginal flows and on cases of doubt in connection with that same matter. These fluids are menstrual blood, the abortion, and the like. The women are classified as to whether they are Israelite, Samaritan, Sadducean, and so on. The animate source of uncleanness—in this case, the woman—must take precautions to ascertain her status, and the net effect of the law is to require the woman to pay close attention to the condition of her vagina. The woman who has a fixed period still has to examine herself in the morning, at twilight, and before having sexual relations. These requirements impose considerations of cultic cleanness on a variety of homely situations. A man concerned with seminal emission, by contrast, is discouraged from doing the same, but if his motive is to look out for flux, he is praised as well. While considerations of eating priestly rations in the state of cultic cleanness register, the premise of the law throughout addresses the home of an ordinary Israelite. If a drop of blood is found on the man's cloth, the man is assumed to have had sexual relations with a menstruating woman; so too, if blood is found on her clothing at the time of intercourse. If blood is found on her clothing later on, the matter is not certain. The result is that sexual relations are subject to considerations of cultic cleanness, even when the prevailing assumption is that both parties are cultically clean for the act.

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Principal resources for this study are:

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  3. Edersheim, Alfred, "The Life and Times of Jesus the Messiah"
  4. Neusner, Jacob (translation and commentary), "The Babylonian Talmud".
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