

REASONS FOR NORMS IN MISHNAIC DISCOURSE:
SOME FORMAL, FUNCTIONAL, AND CONCEPTUAL
OBSERVATIONS*

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ABSTRACT

The Mishnah, a third-century CE collection of rabbinic law, does not generally account for the validity of its legal provisions. Occasionally, however reasons or warrants are given. The present thesis is based on the exploration, classification, and analysis of the reasons encountered in seven sample tractates (Demai, Yebamoth, Ketuboth, Nedarim, Baba Kamma, Baba Metzia, and Horayoth). Within these limits, the thesis attempts to identify formal and functional classifications of different kinds of reasons, based on literary-synchronic investigation with the tools of linguistics, form-analysis, and discourse analysis.

In approaching the material, a very open 'definition' of the concept of reason is used, so as to allow the Mishnaic material to point to its own distinctions. To start with, a purely formal and non-judgemental notion of reason is adopted, as something that is the answer to a 'why question'. Some more substantive functions of reason which are relevant to the Mishnah are flagged up by Stephenson's distinction of types of reasons: for example the property of the item evaluated, the motives of agents, or the consequences of generalizing an action.

For the initial analysis of the Mishnaic text, a classification of reasons distinguishes them according to their grammatical, syntactical and argumentative traits. Grammatically speaking, Mishnaic reasons are (almost) always attached to hypothetical legal cases, i.e. protasis-apodosis units ('If...then'). The particles or conjunctions that one finds to link reason-clauses to the apodosis are: (על ש, לפי ש, ש, וזה הכלל, קל וחמר, מעשה, מנהג) while the arguments supporting the apodosis are (הואיל ו, משום, מפני ש).

As for reason type, one can find 'dependent' and 'independent' reasons: the former quotes Scripture, a *ma'aseh*, or a *minhag*, while the latter articulates directly some fact or observation which is logically related to the apodosis (or protasis). It is also possible to distinguish between arguments and types of reasons in that a single argument may possibly carry various kinds of explanation (e.g. linguistic, legal, or factual).

The second section of this thesis describes the co-textual and contextual relations in which Mishnaic reasons stand to the hypothetical legal cases, and their function within the discourse. No one-to-one correspondence between the formal features of reason-clauses and their discursive function may be observed. Also, the delimitation of the two concepts of 'explanation' on the one hand, and of 'generalization' on the other (of which the Mishnaic *zeh ha-kelal* affords an example), remains difficult.

An attempt to conceptualise the Mishnaic activity of 'giving reasons' leads me to pose the following wider questions whose relevance arises from the examination of the material as provided here: 1. how is the reason formally expressed? 2. Does the reason increase or limit the range of application of the protasis (or of the apodosis)? 3. What is the type of argument used in support of the reason? 4. What kind of explanation does the reason, seen in the context of its argument provide? 5. What type of norm is explained by the reason? 6. Is the reason provided a final reason or does it call, in the way in which it is formulated, for further interpretation or expansion?

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ABBREVIATIONS

Works

JAAR

Journal of the American Academy of Religion

OED

Oxford English Dictionary

Tractate Names

Bekh.

Bekhoroth

B. K.

Baba Kamma

B. M.

Baba Metzia

Dem.

Demai

Hor.

Horayoth

Ker.

Kerithoth

Ket.

Ketuboth

Ned.

Nedarim

Shab.

Shabbath

Yeb.

Yebamoth

INTRODUCTION

1. *Explanation of the topic.*

The Mishnah is the first foundation document of Rabbinic Judaism, and its *status*, recognized by the Talmud and later Jewish tradition, is that of Oral Torah, revealed by God to Moses at Sinai. The term Mishnah, which comes from the Hebrew word *shannah* 'to repeat', is usually used to designate a law-code comprising 'the entire religious law formulated until c. 200'¹ by the *Tannaim*.² Significantly, the Mishnah does not provide any explanation about itself, its authority and origin. So much so that already 'in the second century scholars were still divided as to what was meant by מִשְׁנָה "Mishnah"'.³ Two disciples of Rabbi Akiba in fact ask in a *baraita*:

What is Mishnah?

Rabbi Meir says, *halakhot*.

Rabbi Judah says, *midrash*.⁴

In this passage two different answers are given to the question 'what is Mishnah?' but no reason is provided in support of these. This is quite a usual constellation in *Tannaitic* literature. But sometimes a reason is in fact given, and the aim of this dissertation is precisely to see how this is done. In other words, it will be investigated the giving of reasons for norms in the main literary document of *Tannaitic* literature: the Mishnah.

I shall be considering on the one hand the formal expressions used to introduce and to express reasons, and on the other hand, from the point of view of discourse analysis, the actual functions performed by the reasons used in support of a legal norm. My analysis will be limited to seven Mishnaic tractates taken from three different orders.⁵ I hope this will nevertheless allow me to draw out some observation of a more general character and to spell out regularities and patterns (both formal and functional) for the purpose of classifying the different kinds of reasons encountered.

I shall divide the dissertation into two main parts. The first deals with word analysis, that is, the formal semantic and syntactic aspects of 'reasons', with a view to spelling out the different formal features of expressing reasons in the Mishnah and the problems encountered in attempting to establish criteria for their classification. In the second part, I shall consider 'reasons' from a functional and pragmatic point of view with particular attention to two main points: the relation of the reason to its co-text and context, and the discourse function performed by the reason. Both parts I and II will be based on the analysis of a number of examples selected on the basis of their relevance to the above-stated criteria and on the basis of my ability to explain the specific *halakhic* contents as relevant.

Below I shall first define the topic further by making reference to both the *Tannaitic* and *Amoraic* use of the word מַעֲטָה and to modern scholarly examinations of the activity of 'giving reasons' in the Mishnah.⁶ First, however, I shall make a few observations on the language and style of the Mishnah.

1 G. Stemmerger, *Introduction to the Talmud and Mishnah*, Second ed. (Edinburgh: T & T Clark, 1996), p. 109.

2 'Teachers' or 'repeaters'.

3 Dov Zlotnick, *The Iron Pillar - Mishnah* (Jerusalem: Bialik Institute/Ktav, 1988), p. 11.

4 Kiddusin 49a, in *ibid.* p. 11.

5 Tractate Demai from *Zeraim*, tractates Yebamoth, Ketuboth, and Nedarim from *Nashim*, and tractates Baba Kamma, Baba Metzia, and Horayoth from *Nezikim*.

6 Our theme is related to the problem of *ta'amei ha-mitzvot* i.e. to the quest for the rational meaning for the commandments as it has been developed particularly from the Middle Ages onward by Maimonides, Nahmanides and the author of the *Sefer ha-Hinnukh*. In accounting for the distinction between the problem of *ta'amei ha-mitzvot* and the present research, I would say that my effort here deals with the question of reasons for *halakhoth* in that this latter term carries an immediate link to Rabbinic texts. As we shall see, the reasons encountered do not directly deal with the rationale of a divine command. Rather, the Mishnaic question is to determine the proper route to take under such a command.

Much closer though related to the question of *ta'amei ha-mitzvot* are the problems of the intention (*kawwanah*) required when performing a *mitzvah*, and that of differences of opinions about law. On these issues see for instance, G. Appel, *A Philosophy of Mizvot* (New York: Ktav, 1975), R. Goldenberg, "Commandment and Consciousness in Talmudic Thought," *Harvard Theological Review*, no. 68 (1975), Joseph B. Soloveitchik, *The Halakhic Mind*

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I shall also attempt to give a preliminary definition of 'reason' and explain how I intend to use the term, and conclude with some methodological observations.⁷

2. Reasons in the Mishnah and notes on the Mishnaic style and language

It is well known that the Mishnah generally does not tend to provide explanations accounting for the validity of its rules. At times however, a reason (טעם) is given.⁸ This term, as Urbach points out, is used very rarely in *Tannaitic* literature: 'in the Mishnah the word *ta'am* in the sense of "reason" is used only twice';⁹ the two cases mentioned by Urbach are Bikkurim 1:2 and Menahot 4:3.¹⁰ This situation contrasts with what is found in the Talmud where 'there is hardly a page [...] on which the word *ta'am* or its Aramaic form, *ta'ma*, does not appear'.¹¹

In relation to this, Halivni contrasts the relatively weak 'vindicatory'¹² character of the Mishnah with both biblical law, and other collections of texts such as Midreshei Halakhah, other Midrashim and the Talmud itself. Referring to these texts, Halivni writes:

Yet in contrast with the apodictic Mishnah, they all seem to have a preference for law that is expressly reasonable, that seeks to win the hearts of those to whom the laws are addressed. They seem to convey that Jewish law cannot be imposed from above, to be blindly obeyed. Jewish law is justificatory, often revealing its own *raison d'être*. Apodictic Mishnah, on the other hand, constitutes a deviation from this overall trend of vindicatory law. It runs counter to Jewish appreciation, which favors laws that justify themselves, either logically or scripturally. No wonder Mishnah form was relatively short-lived, lasting only about 130 years.¹³

According to this author, Mishnaic form was but a temporary response to the particular historical and political situation in the Palestine of the first centuries, which contrasted with the usual Jewish preference for justification. Historical circumstances, Halivni points out, generated the necessity of a code of law of easy memorization and this is supposedly the reason for Mishnah's concise and

(London: Seth Press, 1986)., Jeffrey I. Roth, "The Justification for Controversy Under Jewish Law," in *Jewish Law and Legal Theory*, ed. M. P. Golding (Hants Uk: Dartmouth, 1994)., and Ephraim E. Urbach, *Les sages d'Israël*, trans. Marie-José Jolivet (Paris: Verdier, 1996).

7 For reason of space I must limit my introduction to just a brief outline of the above-listed issues.

8 Mielziner points out that a Mishnaic reason 'it is either based a) on a biblical passage (קראת) and its interpretation, and is then usually introduced by ושאמר; or b) on common sense (כברר); or c) on a general principle (כלל)'. Moses Mielziner, *Introduction to the Talmud* (New York: Bloch Publishing Company, 1968), p. 193. Actually, as we shall see, Mielziner's list could and should be expanded and further specified.

9 Ephraim E. Urbach, *The Halakhah: Its Sources and Development*, trans. Raphael Posner (Tel Aviv: Modan Publishing House, 1996), p. 150.

10 The second case is particularly significant in that, by distinguishing *halakhah* from *ta'am*, it shows the existence of different types of reasons and that they can be in opposition to one another. In this case the *halakhah* is based on an historical argument while the reason provides a logical one. On the Rabbinic limitation of logical arguments as supports for norms see for instance Alex Samely, *Rabbinic Interpretation of Scripture in the Mishnah* (Oxford: Oxford University Press, 2002), pp. 186 ff. and Urbach, *The Halakhah*, p. 92.

11 Urbach, *The Halakhah*, p. 152. Urbach further remarks that 'the reasons expounded in the *Gemara* are also of a different nature [from those in Mishnah and Tosefta]: some of them are attached to – or are derivations from – Scriptural verses or hints but others are purely logical'.

12 Halivni uses the term 'vindicatory law' in opposition to 'apodictic law', the former meaning laws that are justified while the latter, laws that are autocratically prescribed. He thus criticises Alt's distinction between casuistic and apodictic forms by arguing that the distinction is merely formal and logically not very appropriate and concludes by saying that 'logically and substantively it would be better to contrast the apodictic with the vindicatory, the former denoting categorical pronouncements, the latter justificatory statements'. Cf. David W. Halivni, *Midrash, Mishnah, and Gemara* (Cambridge MA: Harvard University Press, 1986), pp. 3 ff. Although Halivni's remark is not devoid of practical utility I would recall that, as Daube points out, 'the form is the message', and important historical and conceptual considerations may be traced from Alt's distinction between casuistic and apodictic. Cf. David Daube, "The Form is the Message," in *Ancient Jewish Law. Three Inaugural Lectures* (Leiden: E. J. Brill, 1981).

13 Halivni, *Midrash, Mishnah, and Gemara*, p. 4.

apodictic style.¹⁴ Similarly, Neusner, stressing the close relation between thematic and formulary patterns in Mishnaic discourse, argues that these serve mnemonic ends. Neusner writes further that 'there is no reason to doubt that if asked the tradental-redactional authorities behind the Mishnah the immediate purpose of their formalization, their answer would be, to facilitate memorization. For that is the proximate effect of the acute formalization of their document'.¹⁵

Neusner, who has devoted many years to studying the Mishnaic language and style, stresses the fact that 'Mishnah is formulated within a few tightly disciplined formulaic patterns',¹⁶ and that there is a close relationship between literary form and conceptual content, as well as a peculiar relationship between language and the reality of time and space. It is worth quoting a long passage where Neusner synthesises his reflections upon Mishnaic language.

Mishnah's formalized grammatical rhetoric creates a world of discourse quite distinct from the concrete realities of a given time, place or society. Unchanging and enduring patterns lie deep in the inner structure of reality and impose structure upon the accidents of the world. Reality for Mishnaic rhetoric consists in the deep syntax of language: consistent and enduring patterns of relationship among diverse and changing concrete things or persons. What lasts is not the concrete thing but the abstract principle governing the interplay of concrete things. Just as we accomplish memorization by perceiving not what is said but how it is said and persistently arranged, so we speak to undertake to address and describe a world in which what is concrete and material is secondary to how things are said. For Mishnah language is a self-contained formal system used only incidentally for communication.[...]

The two striking traits of mind of Mishnaic rhetoric are, first, perception of order and balance, second, the conviction of the mind's centrality in the construction of order and balance: the imposition of wholeness upon discrete cases or phrases. So Mishnah invariably presupposes the presence of the active intellect. In Mishnah language becomes a generative force of ontology.¹⁷

The Mishnah, as Neusner further remarks, 'never identifies its prospective audience'.¹⁸ Nonetheless, as Daube, Samely and Neusner himself (among others) have pointed out,¹⁹ the Mishnah addresses its message quite clearly, to the members of a particular community, the Rabbis, 'capable of perceiving inferred convention, of grasping the subtle and unarticulated message of the medium of syntax and grammar'.²⁰

In a different way, Samely also remarks on the attempt of the Mishnah-framers to impose an ordered structure on reality, and to compel their audience to a creative effort of continued interpretation: 'On the one hand *halakhah* is the work of imposing conceptual order on a multi-faceted world [...] and that work has far-reaching effects of reduction, rigidity and exclusion. On the other hand there is something of a refusal or reluctance to place a cap on this work or to perform the task *once for all*'.²¹ It seems as though the awareness of the unfathomable nature of reality is reflected in the open-ended character of Mishnaic discourse which, by its very nature, refuses to give once for all

14 Ibid. pp. 40 f.

15 Jacob Neusner, *The Memorized Torah. The Mnemonic System of the Torah* (Chico, California: Scholar Press, 1985), p. 112.

16 Jacob Neusner, "Form and Meaning in the Mishnah," *JAAR*, no. 45 (1977): p. 27.

17 Ibid. pp. 27 f.

18 Jacob Neusner, *Formative Judaism. Religious, Historical, and Literary Studies* (Chico: Scholar Press, 1982), p. 109.

19 See Daube, 'The Form is the Message'; Neusner, 'Form and Meaning in the Mishnah'; and Alex Samely, "From Case to Case. Notes on the Discourse Logic of the Mishnah," in *Studies in Islamic and Middle Eastern Texts and Traditions in Memory of Norman Calder*, ed. J. A. Mojaddedi G. R. Hawting, A. Samely, *Journal of Semitic Studies Supplement 12* (Oxford: Oxford University Press, 2000)..

20 Neusner, "Form and Meaning in the Mishnah," p. 28.

21 Samely, 'From Case to Case', p. 268. It seems to me that this idea is expressed, though in different terms, by Soloveitchik when he remarks *Halakhic man*'s attitude to reality which, on the one hand is determined by the a priori concepts fixed by the *halakhah* but on the other hand requires man's creative effort when dealing with 'a posteriori phenomena'. Ref. Joseph B. Soloveitchik, *Halakhic Man (Ish ha-halakhah)*, trans. Lawrence Kaplan (Philadelphia: The Jewish Publication Society, 1983), pp. 17 ff.

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fixed and abstract formulations preferring instead a casuistic approach which continually requires an effort of reformulation of concepts in relation to always-changing realities.

In what way does all this relate to the activity of giving reasons? Samely²² draws a connection between the lack of abstract *halakhic* principles in the Mishnah and the paucity of *halakhic* explanations. He suggests that this could be aimed at saying that the ‘ability to render new *halakhic* decisions or to contribute to the discourse of *halakhah* cannot be acquired from this text, or any text [...]. Instead, that competence must be acquired by a process of learning and imitation which cannot be reduced to a verbal representation. No understanding of the principles can be gained except through experience of the way they are applied in many different circumstances’.²³ On the other hand and somehow related to it, he argues that the choice of not providing principles and explanations could be part of a precise socio-political strategy aimed ‘to prevent the unauthorized use of *halakhic* competence’.²⁴

After these observations on Mishnaic style and language, and after having summarised two different accounts for the scarcity of explanations for Mishnaic rules, it is time to introduce my own definition of a reason and of what I mean when I use the term ‘explanation’.

3. ‘Norm’ and ‘reason’: a definition

After having briefly introduced the subject in its conceptual and historical dimension, a more precise definition of the two terms substantiating the title i.e. ‘norm’ and ‘reason’, is now required. In what follows, I shall provide a brief clarification of the type of norm to which reasons are generally appended in the *Mishnah*, along with an explanation of what I do intend by the term ‘reason’ both conceptually and analytically.

The great majority of *mishnaic* norms are formulated casuistically that is, they are formed by the combination of two parts: the protasis which states the ‘conditions’ (facts and circumstances), and the apodosis which is the legal evaluation of those facts/circumstances.²⁵ It is worth quoting a passage where Elon elucidates the peculiar conceptual traits of the casuistic style which, he observes, left its mark on all subsequent Jewish legal codes:

By concentrating on actual problems and particular issues, and by formulating the solution to concrete cases, Jewish law achieved great flexibility in solving new problems. New problems were solved by comparing them to problems already solved, and the applicability of the prior solution depended on the actual facts of each case and on reasoned judgment as to whether to limit or extend the existing law in light of the inner logic of the law and the needs of the time and place. This broad flexibility is more achievable with casuistic formulation, which lays down rules case by case, than it is with normatively stated law, which broadly declares general legal principles in the form of obligatory norms.²⁶

Mishnaic casuistic laws, which originate as oral tradition, are of course much more context-dependent than laws formulated in the normative style, this should be kept in mind when analysing the text as a literary artefact that is in its ‘literal’ sense. What I mean is that I’m aware of the fact that a purely literary analysis may well impinge on a correct (complete) understanding of a norm whose sense, as Jackson points out, also derives from its narrative meaning, which ‘consists not in a

22 Alex Samely, "Delaying the Progress from Case to Case: Redundancy in the Halakhic Discourse of the Mishnah," in *Jewish Ways of Reading the Bible*, ed. G. Brooke, Journal of Semitic Studies Supplement 11 (Oxford: Oxford University Press, 2000), pp. 127 ff.

23 Ibid. p. 131.

24 Ibid. p. 131. Unlike Halivni, Samely’s hypothesis does not see the Mishnaic style as an ‘accident’ determined by historical circumstances but rather as a precise ideological and philosophical choice serving specific ends.

25 On this, Elon observes that sometimes also the normative style is encountered in the Mishnah and explains the difference between the two styles as follows: ‘Casuistic formulation sets forth the law by describing specific cases detailing the concrete factual circumstances to which a given law is applicable. The normative style, on the other hand, states the norm, the abstract legal principle, without reference to any concrete factual situation’. In Elon M., *Jewish Law, History, Sources, Principles* (Philadelphia), III. p.1072.

26 Ibid. pp. 1077 f.

paraphrase [...], but rather in the typical stories, or narrative images evoked by the words within a group which shares the social knowledge necessary to evoke those images without fully spelling them out'.²⁷

As to the form, *mishnaic* casuistic norms are usually formulated as complex sentences composed by a main clause (apodosis) and a conditional clause (protasis); from now on I shall refer to *mishnaic* norms as 'case schemata' i.e. protasis-apodosis units.²⁸ We will see that 'reason-clauses' are normally appended to the main clause of the case schema (apodosis), though their relation with the two components of it is multifaceted, as I will try to point out after having provided a definition of what I intend with the term 'reason' as a concept and as analytical category.

The first problem, in the attempt to define the expression 'reason-clause' has been both the definition of the term 'reason', and its application. In trying to answer the question 'what is a reason?', I realised, first that there is no univocal answer to this question, and second, that there is a variety of possible applications and some of them fit what I found in the Mishnah (as reason), and others not.

The *Oxford English Dictionary* provides twenty-three different meanings of the term and reports six synonyms of it. Some of them broadly fitted with what I was looking for in the Mishnah,²⁹ so I compared them with the definition given by Jastrow³⁰ for the term רעם to see whether or not there was a correspondence of meaning. The comparison allowed me to sense a possible discrepancy between our understandings of the term 'reason' and that (those) of the term רעם in the *Tannaitic* or *post-Tannaitic* period. In fact, all the definitions of 'reason' reported in the *OED* refer to the sphere of thought, while the root רעם displays a wider semantic and lexical range of meanings which also refer to the sphere of senses.³¹

This semantic analysis raised my awareness of the caution required in imposing on the Mishnah our understanding of 'reason', but also that the term was still too inclusive and that further clarifications were required.

Thus, the attention has been turned to three different attempts to define and classify what counts as a reason: the first is that of Gemser³² who classified biblical motive-clauses according to contents.³³ As Samely points out, Gemser's categories 'give little guidance for classifying reasons³⁴ in the Mishnah'

27 Bernard S. Jackson, "The Original Oral Law," in *Jewish Ways of Reading the Bible, Journal of Semitic Studies Supplement 11*, ed. G. Brooke (Oxford: Oxford University Press, 2000), p. 5. This is particularly important to bear in mind when analysing a text like the Mishnah whose 'degree of implicitness' is quite elevate.

28 'The enunciation of circumstances or of the situation is said to be contained in the protasis of the sentence (the 'if' part), while the halakhic evaluation is given in its apodosis (the 'then' part). Found in Samely, "Delaying the Progress from Case to Case", p. 102.

29 These are: **1.a.** A statement of some fact (real or alleged) employed as an argument to justify or condemn some act, prove or disprove some assertion, idea, or belief. *I.c.* One of the premises in an argument *esp.* the minor premise when placed after the conclusion. **3.a.** A statement, narrative, or speech; a saying, observation, or remark; an account or explanation *of*, or answer *to*, something. **6.** A ground or cause of, or for, something: **a.** a fact, procedure, or state of things, in some way dependent upon human action or feeling. **b.** of a fact, event, or thing non dependent on human agency. **9.** Rationale. *The Oxford English Dictionary. Second Edition*, (Oxford: Clarendon Press, 1989), pp.288-90.

30 Marcus Jastrow, *A Dictionary of the Targumim, Talmud Bavli, Yerushalmi and the Midrashic Literature* (New York: The Judaica Press, 1996).

31 The meanings reported by Jastrow are: *sense, taste, experience, wisdom, sound reasoning, reason, cause, and ground*. Interestingly, in a Modern Hebrew dictionary I found the word רעם translated, firstly, with *taste*, and secondly with *reason*. Ref. Gaio Sciloni, *Dizionario Italiano-Ebraico, Ebraico-Italiano* (Tel Aviv e Firenze: Achiasaf e La Giuntina, 1993). In another one, the root רעם is translated with *taste, accent, and stress* with no reference to *reason*. Ref. Shmuel Bolozky, *501 Hebrew Verbs* (Hauppauge, NY: Barron's Educational Series, 1996).

32 B. Gemser, "The Importance of the Motive Clause in the Old Testament Law," *Supplement to Vetus Testamentum* 1 (1953).

33 1) Gemser distinguishes between: motive-clauses of a simple explanatory character, 2) those of ethical contents, 3) those of a religious kind, cultic as well as theological, and 4) those or religious historical contents. Cf. *ibid.* pp. 55 ff.

34 From now on I will use 'reason' rather than 'motive' because of the different relationship to the norm which these categories entail. Cf. Samely, 'Delaying the Progress from Case to Case', p. 124.

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mainly because they rely ‘on culturally embedded differentiations which are unlikely to have been relevant to the biblical authors’.³⁵ The second attempt considered, that of the modern philosopher Charles L. Stevenson³⁶ proved more interesting and for many of his categories³⁷ it is possible to find examples in the Mishnah. Yet I did not always find it easy to apply Stevenson’s classification to the scrutinized material.

Frederick Schauer³⁸ adopts an interesting definition of reason in that he takes issue with the idea that ‘to *have* a reason for a decision is to have a good reason, and what some might think a bad reason is simply no reason at all’. He explains:

For my purposes, therefore, “reason” labels what follows the word “because” in, “We reach this result because...” or, “I find for the plaintiff because...” [...]. Under this definition, a judge who says she has decided for the plaintiff because it is raining in Calcutta offers a reason – “because it is raining in Calcutta” – even though the reason, unconnected to any sound basis for decision, is a bad one indeed. But although it is a bad reason, it still exhibits the feature of legal practice that I seek to analyse – the explicit act of offering a justification or explanation for the result reached.³⁹

I find this definition of the term ‘reason’ particularly helpful in its being interested in the words which connect the norm to the reason, but also in its being non-judgemental in respect to ‘the legal practice of offering a justification’. Schauer points out another characteristic of the term ‘reason’ which proved useful in analysing the Mishnah, i.e. the fact that ‘reasons are typically propositions of greater generality than the conclusions they are reasons for’.⁴⁰ Useful but not enough in that as we shall see, we sometimes find reasons, which actually serve as specification of the protasis (normally) rather than as generalization (of the apodosis).⁴¹ This fact has also been pointed out by Moscovitz when, referring to *Tannaitic* explanations,⁴² he writes:

Enthymematic explanations, particularly those which address factual issues, generally tend toward a low level of generalization, which is not so far removed from that of the explananda; indeed, such explanations may seem to resemble casuistic statements more than legal principles. Consequently, such explanations may require further explanation. Hence some laws which are explained enthymematically in tannaitic sources are re-explained, and actually better explained, by post-tannaitic sources, which may invoke broader, and at times seemingly different, principles to explain the tannaitic explanations. Such post-tannaitic sources treat the tannaitic explanations as explananda in need of further clarification or greater generalization.⁴³

Another significant element in Moscovitz’ paragraph is the remark that ‘such explanations may require further explanation’ meaning by this, that Mishnaic reason-clauses, often not giving a ‘final’ reason-answer, require to be further interpreted. In other words, as Moscovitz indicates, ‘enthymematic explanation was not always meant to provide clear and comprehensive explanations of the relevant

35 Ibid. p. 126.

36 Charles L. Stevenson, *Ethics and Language* (New Haven: Yale University Press, 1944), pp. 111-29.

37 ‘Here is a catalogue of what [...] Stevenson, counts as ‘rational’ reasons for norms: (a) the property of the item evaluated, (b) consequences of actions, (c) motives of agents, (d) consequences of generalizing an action, (e) authorities, (f) behaviour of the person claiming the norm’s validity, (g) an account of the historical genesis of a moral position.’ In Samely, ‘Delaying the Progress from Case to Case’, p. 126.

38 F Schauer, "Giving Reasons," *Stanford Law Review* 47 (1995).

39 Ibid. p. 636.

40 Ref. Ibid. pp. 634 f. The same aspect has also been pointed out by Moscovitz with reference to rabbinic literature; he defines the term ‘explanation’ (which I consider as a synonym of ‘reason’) as ‘a covering law which underlies a legal ruling of more limited scope’. Cf. Leib Moscovitz, *Talmudic Reasoning* (Tübingen: Mohr Siebeck, 2002), p. 200.

41 More precisely, it may be observed a relationship between the reason provided and the degree of generality of the apodosis; in other words, the reason is sometimes liable to vary the range of application of the apodosis.

42 Which he calls enthymematic, meaning by this elliptic.

43 Moscovitz, *Talmudic Reasoning*, p. 221. As an example of post-Tannaitic explanations of Tannaitic explanations Moscovitz indicates bShab 31b in relation to mShab 2:5.

rulings, but only to bring us closer [...] to a proper understanding of these rulings'.⁴⁴

The result of all the above is a quite general definition (if any) which, while not immediately very significant, allows me to include in my observations a wide range of cases and to draw more meaningful observations from the analysis of their similarity and differences. A more detailed and meaningful description of what can be considered as a 'reason' in the Mishnah will, I hope, emerge in the following parts when specific cases will be analysed.

4. Brief methodological notes

It should already be clear from what I stated above, that the framework of my analysis is not that of the Mishnah where the issue I'm treating is not dealt with at all. All categories I have set up so far and those that I shall lay out below, are based in the present discourse and thus, somehow imposed on the Mishnah.

In contrast to an historical analysis, what I am doing here is a process of updating and there is of course no claim of getting the objective information out of the text.⁴⁵ My questions are of course influenced not only by the epoch I live in but also, by both my personal world-view and interests. Yet I am approaching the text with both the awareness and the openness to the possibility that the analytical work I am going to do will influence me and somehow change my own perspective.

The basic presupposition of this analysis, which will be performed in a synchronic mode,⁴⁶ is the existence of a close relationship between literary form and conceptual content⁴⁷ as the work of Jacob Neusner (among others) clearly postulated; in other words, since forms stand in a functional relationship, I am looking at the meaning through the form.

So, language will be the main object of inquiry, and will be approached through a form-analytical method in the sense given to this expression by Arnold Goldberg, namely: 'a way by means of which forms of rabbinic literature can be recognized and described for the purpose of making the particularities of this literature comprehensible'.⁴⁸ As Goldberg further remarks, 'this method serves a hermeneutic purpose',⁴⁹ even though it is not suitable to depict the whole set of functions detectable in the literary text under examination. This task will be partially accomplished through discourse analysis which, as defined by Brown and Yule, is essentially 'the analysis of language in use [and] as such, it cannot be restricted to the description of linguistic forms independent of the purposes or functions which those forms are designated to serve in human affairs'.⁵⁰ It can be said that discourse analysis starts where form-analysis ends and that the former is suitable to overcome the limitations intrinsic in the latter.

44 Ibid. p. 221.

45 Instead, it will mainly be a matter of interpretation and reconstruction.

46 I use the term 'synchronic' meaning by that, as defined by Goldberg, a 'description of the relations between the parts of a text as a simultaneously functional and formal framework'. Arnold Goldberg, "Form-Analysis of Midrashic Literature as a Method of Description," *Journal of Jewish Studies* 36 (1985): p. 159.

47 As argued by Jaffee commenting on Neusner's outcomes, 'the way in which a law is formulated in the Mishnah is the first clue to understanding the point its formulator intended to make'. Martin S. Jaffee, "Deciphering Mishnaic Lists: A Form-Analytical Approach," in *Approaches to Ancient Judaism*, ed. Scott William Green (Chico: Scholar Press, 1981), p. 19.

48 Goldberg, 'Form-Analysis', p. 159.

49 Ibid. p. 159.

50 G. Brown, and G. Yule, *Discourse Analysis* (Cambridge: Cambridge University Press, 1983), p. 1.

Reasons for Norms in Mishnaic Discourse

PART I

WORD ANALYSIS: GRAMMATICAL, SYNTACTICAL, AND SEMANTIC ASPECTS

1. Introduction

After having defined the problem, described the method, and provided a definition of the analytic tools, it is time now to engage in the proper task of the present dissertation. In this part I shall describe, mainly from the point of view of word analysis, the various kinds of reasons encountered, i.e. I will attempt to set up some useful formal classification according to grammatical, semantic, and syntactical criteria.

It will soon become clear that the task is not an easy one in that for almost all 'reasons' cross-criteria of classification apply, that is to say, as Samely already observed, that 'there is a wide variety of relationships between the reason-clause on the one hand and the norm or apodosis to which it belongs on the other'.⁵¹ What can nonetheless be pointed out is that all reason-clauses encountered appear to be invariably attached, either syntactically and conceptually, or only conceptually, to the protasis-apodosis rule. This in other words means that usually, Mishnaic reasons do not really explain norms but rather apodoses that is, *halakhic* evaluations of a given situation (protasis) ruled by a certain norm. Or, also, situations where two or more norms are liable to be applied; these are the cases referred to by Neusner as 'grey areas of law'. The peculiarity of these (real or hypothetical) cases is the fact that 'diverse legal principles [are brought] into juxtaposition and conflict'⁵² and the *halakhic* evaluation of the case entails a decision as to which norm or principle has to be applied in the specific case.⁵³

A first substantial distinction can be made according to the type of argument which supports the norm; basing myself on Elon's definition of the 'legal sources of Jewish law'⁵⁴ I distinguish between 'dependent' and 'independent' reasons.⁵⁵ The first category includes reasons given on the basis of one of the following legal sources of law: scriptural quotations, *minhag* and *ma'aseh*; conversely, the category 'independent reasons' includes all the reasons not supported by any of the previous legal sources but rather, justifications based on independent reasoning.⁵⁶ To this category belong for instance reasons supported by *a fortiori* arguments along with any other kinds of logical or analogical, linguistic or legal argument which do not refer to any of the other sources listed above.

But, another distinction has to be introduced between 'argument' and 'type of reason'. Meaning by 'argument' one of the above listed sources of law, it must be pointed out that there are arguments which can provide different types of reason. For instance, a scriptural quotation may possibly provide

51 Samely, 'Delaying the Progress from Case to Case', p. 124.

52 Jacob Neusner, *Judaism: The Evidence of the Mishnah* (Chicago and London: Chicago University Press, 1981), p. 101.

53 See for instance B. K. 3:10 and 8:5 and Ket. 3:2.

54 Elon distinguishes six legal sources of Jewish Law: Tradition (*kabbalah*), Interpretation (*midrash*), Legislation (*takkanah* and *gezerah*), Custom (*minhag*), Case or Incident (*ma'aseh*), and Legal Reasoning (*sevarah*); Cf. M. Elon, *Jewish Law. History, Sources, Principles*, 4 vols. (Philadelphia: JPS, 1994), vol. I, ch. 6, pp. 229-39. Elon's definition of 'legal sources' corresponds to what David Walker calls 'formal sources of law' and defines as follows: '[...] formal sources, by reason of their accepted authority, confer validity and legal force on principles and rules drawn from them. They are recognized law-creating and law-declaring agencies from which come valid rules of law.'; as found in David M. Walker, "Sources of Law," in *The Oxford Companion to Law* (Oxford: Clarendon Press, 1980), p. 1157.

55 For a quick reference on the relationship between 'reason' and 'source' see W. Frawley, *Linguistic Semantics* (NJ-Hove and London: Hillsdale, 1992), pp. 225-27.

56 I do not use the term *sevara* to name this category in that the term does not appear in the Mishnah, and as Urbach points out, '*sevara* in the sense of a logical reason or an assumption on which reasoning is based was an innovation of the *amora'im*'. *The Halakhah*, p. 149.

a linguistic, or legal, or factual reason; the same holds true with *minhag* and *ma'aseh*.

A second main distinction which I draw is syntactic, i.e., I distinguish between reasons given through reason-clauses and reasons not given through reason-clauses. To the first category belong those reasons which come as subordinate sentences usually appended to the apodosis of a case schema, whereas to the second category belong reasons that comes as independent sentences without any syntactic subordination to what they are deemed to explain.

As we shall see, there is no one-to-one correspondence between the formal distinction just spelled out and the previous one concerning the type of argument provided. In fact, most reasons of the firsts two categories (dependent and independent reasons) may be expressed either through reason-clauses or as independent sentences.⁵⁷ Nonetheless, I decided to keep hold of this last distinction and to classify the cases according to it because of the nature of the present study whose main interest is the formal and functional pattern of reasons more than the type of argument which they provide.

The chart below reflects the classificatory difficulties just pointed out; the items reported are, on the one hand, causal particles introducing reason-clauses, but on the other hand, arguments supporting the apodosis.

	Demai	Yebamoth	Ketuboth	Nedarim	B.K.	B.M.	Horayoth	Total
שנאמר	-	8 ⁵⁸	2	3 ⁵⁹	13 ⁶⁰	13	5 ⁶¹	44
ש	4	8	18	21	11	10 ⁶²	3	75
(על ש)	-	-	-	-	-	-	(2) ⁶³	(2)
לפי ש	-	-	-	-	2	-	-	2
מפני ש	5	15	11	3	2	13	2	51
משום	-	18	-	-	-	1	-	19
הואיל ו	-	6	-	1	-	-	-	7
מנהג	-	-	-	3 ⁶⁴	1 ⁶⁵	13 ⁶⁶	-	17
מעשה	-	5 ⁶⁷	1	4	1	2	-	13
קל וחומר	1 ⁶⁸	2 ⁶⁹	-	2 ⁷⁰	2 ⁷¹	-	-	7

57 This is true for scriptural quotations, *minhag*, and *qal va-homer*. For instance, in Ned. 8:6 the argument which supports the rule is a *minhag* but it is expressed as reason-clause dependent on the causal particle ש. On the other hand, in B. M. 9:1 the *minhag* is part of the protasis but it can nevertheless be considered as a reason in that it justifies the apodosis.

58 In Yeb. 6:6 the scriptural quotation is introduced by **הוא אומר**; in Yeb. 9:6 by the expression **על זו נאמר**; in 10:3 and in 12:3 the scriptural quotation is not introduced by any explicit expression.

59 In Ned. 10:7 the scriptural quotation is introduced by **הוא אומר**, while in 11:9 the scriptural quotation is not introduced by any explicit expression.

60 In B. K. 3:9 the expression used is **על זה נאמר**; in 5:5 and 5:7 **למה נאמר**, and in 6:4 there is no explicit introduction of the scriptural quotation.

61 The scriptural quotation in Hor. 1:4 is introduced by **ונאמר**.

62 In B. M. 3:1 the reason is introduced by **שהרי אמרו**.

63 I report this expression although in the two cases encountered (Hor. 2:4) the expression **על ש**, translated by Danby as 'because', does not perform any real explanatory function; I shall thus not analyse any example.

64 The two *minhagim* in Ned. 8:6 are expressed by the **שדרך בני אדם**, while in 10:4 by **דרך תלמידי חכמים**.

65 The *minhag* in B. K. 6:5 is introduced by the following expression: **שכן דרך בני אדם**.

66 The *minhag* in B. M. 4:11, the two in B. M. 5:5, the firsts two in 7:1, and the three *minhagim* in 9:1 are expressed by **מקום ש**, the following two in 7:1, and one in 9:1 are expressed as follows: **כל כמנהג המדינה**, and finally in 7:8 the expression used is **מהלכות המדינה**. B. M. 5:8 reports a practise of Rabban Gamaliel which, because of his authority, was given the rank of custom.

67 In Yeb. 15:2 the *ma'aseh* is expressed as follows **ובמעשה שהיה**.

68 In Dem. 2:2 there is an *a fortiori* argument though not introduced by any explicit terminology. For the use of different terms in the context of an *a fortiori* argument, see Samely, *Rabbinic Interpretation*, p. 176 ff.

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	Demai	Yebamoth	Ketuboth	Nedarim	B.K.	B.M.	Horayoth	Total
זוה הכלל	1	2 ⁷²	1	3	2	-	1	10
Total	11	64	33	40	34	52	11	245

In the seven tractates surveyed I have found 245 cases which ‘responded’ to what I defined above as a reason; considering the length of the various tractates it can be said that the proportion of occurrence of ‘reasons’ are very similar in each tractate. In the following sections, 2 and 3 of this part, I shall analyse each of the expressions listed in the chart with the support of selected examples.

2. Reason-clauses. Analysis of selected examples

2.1. ׀ and other causal conjunctions connected to ׀.

The first and more common particle introducing causal sub-clauses is undoubtedly ׀ which I have encountered 75 times in the scrutinized material.⁷³ This term can be used alone or together with other particles such as לִפְיֵי, and מִפְּנֵי;⁷⁴ all these expressions may roughly be translated as ‘because’ or ‘since’. In what follows I shall first analyse an example for each of these just stated causal particles before commenting on the other causal terms introducing reason-clauses which are: מִשּׁוּם, and הוֹאִיל וְ.

(1) B. M. 4:11

⁷⁵(A) Produce may not be mixed together with other produce, even fresh produce with fresh, and, needless to say, fresh with old;

(B) howbeit they have permitted strong wine to be mixed with weak,

(C) **since** (מִפְּנֵי ׀) this improves it.

(D) Wine lees may not be mixed with wine, but the buyer may be given lees that come from the same wine that he has bought.

(E) A man whose wine is mixed with water may not sell it in a shop unless he has told the buyer [that it is mixed];

(F) and he may not sell it to a merchant even if he has told him,

(G) **since** (׀) he [would buy it] only to deceive therewith.

(H) In any place where they are **accustomed** (מִקְוִים ׀) to put water into wine, they may do so.⁷⁶

The first reason-clause in (C) which is introduced by מִפְּנֵי ׀ directly follows the main clause (B) introducing an exception to what stated in the first declarative main clause in (A). The reason provided can be defined as ‘factual’ in that it does explain the actual effect of the action described in (B); the reason, by justifying the exception to the rule stated in (B), modifies the validity of the information

⁶⁹ The *a fortiori* argument in Yeb. 15:3 is not introduced by any explicit terminology.

⁷⁰ The two *a fortiori* arguments in Ned. 10:6-7 are not introduced by any explicit terminology.

⁷¹ In B. K. 2:5, the reason provided is clearly based on a קַל וְחִמְרָא argument although the expression itself does not appear.

⁷² In Yeb. 2:3 the ‘general rule’ being placed at the beginning of the pericope is introduced by the formula בְּלֵל אִמְרוּ.

⁷³ Of course ׀ does not always introduce explanations in that it may be used as a relative pronoun or as a conjunction. Cf. Moscovitz, *Talmudic Reasoning*, p. 218.

⁷⁴ Cf. M.H. Segal, *A Grammar of Mishnaic Hebrew* (Oxford: Clarendon Press, 1958), p. 148 and 226-27.

⁷⁵ The subdivision is mine; from now on if not stated otherwise all paragraph subdivisions in translation from the Mishnah are mine.

⁷⁶ H. Danby, *The Mishnah* (Oxford: Oxford University Press, 1964), p. 355.

given apodictically in the main clause (A).

The second reason-clause (G) introduced by ψ is appended to the elliptical main clause (F) which is actually an apodosis of a case schema whose protasis is stated in (E). Interestingly, the validity of the apodosis in (F) is limited by the *minhag* in (H) which stands in opposition to the reason-clause (G) which provides a ‘psychological’ or ‘usage awareness’ reason; it can also be observed that to a certain extent and quite differently, both the reason-clause (G) and the declarative sentence (H) might be considered as based on custom.⁷⁷

The next example taken from tractate Baba Kamma, reports one of the two cases encountered of reasons introduced by the conjunction ψ לִפִּי שׁ.

(2) B. K. 4:7

(A) The ox of a woman or the ox of orphans, or the ox of a guardian, or a wild ox, or an ox belonging to the Temple, or an ox belonging to a proselyte who died without heirs

(B) – these are all liable to death [if they kill a man].

(C) R. Judah says: A wild ox, or an ox belonging to the Temple, or an ox belonging to a proselyte who died are exempt from death,

(D) **since** (ψ לִפִּי שׁ) they have no owner.⁷⁸

The reason-clause in (D) is appended to the elliptical main clause (C) carrying the dissenting opinion of R. Judah to the apodosis (B) of the protasis stated in (A). The alternative apodosis offered by R. Judah is likely to be based on the same argument which supported the apodosis of the first case schema in B. K. 4:3;⁷⁹ the rule there was motivated on the basis of the verse of Ex. 21:35. The reference to the word ‘neighbour’ in Ex. 21:35 seems to be made also because the reason-clause (D) directly refers to just the first element (the wild ox) of the main clause (C) but not to the following two. Thus, it seems as though Rabbi Judah creates an opposition (motivating the contrasting apodosis) not only between an ox which has an owner and one who has not (as the reason-clause in (D) would lead to suppose),⁸⁰ but also between priest/levite and Israelite,⁸¹ and between Jews and non-Jews.⁸² If this holds, the reason-clause in (D) is itself elliptical accounting just for the first of the three elements to which the apodosis in (C) refers.

2.2. מִשׁוּם

Another term used to introduce a reason-clause is מִשׁוּם, which occurs 19 times: curiously, 18 times in tractate Yebamoth,⁸³ once in Baba Metzia. The way the term is used deserves some comment and I shall do that with the support of an example.

77 The custom in (H), expressed by means of the formula ψ מִקְוִים שׁ, is of course a general norm and its function is in this case similar to that of a ψ זֶה הַכֶּלֶל. The validity of (H) applies to the protasis (E) and stands in opposition to the apodosis (F) supported by the reason-clause (G). Thus we can see in this case that a custom expressed as a general rule, in fact constitutes a local exception to the norm (of more general validity) expressed in (E) and (F).

78 Danby.p. 337.

79 ‘If an ox of an Israelite gored an ox that belonged to the Temple, or an ox that belonged to the Temple gored the ox of an Israelite, the owner is not culpable, **for it is written** (שְׁנֵאֲמַר), *The ox of his neighbour* (Ex. 21:35), – not an ox that belongs to the Temple.’ Ibid. p. 337.

80 This would in fact apply only to ‘the wild ox’ in (C).

81 Referring to the ‘ox belonging to the Temple’.

82 Referring to the ‘ox belonging to a proselyte’. See Samely, *Rabbinic Interpretation*, p. 288.

83 ‘This tractate treats the laws of the ‘the levirate marriage’ [...], which require a man to take to wife his brother’s widow if his brother had died childless.’ Danby, *The Mishnah*, p. 218.

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(3) Yeb. 3:10

(A) If two men had betrothed two women and when they entered into the bride-chamber the two women were exchanged,

(B) then both are culpable **by virtue** (בְּטוֹבָה) of the law of *thy neighbour's wife*;

(C) and if they were brothers, **by virtue** (בְּטוֹבָה) of the law of *thy brother's wife*;

(D) and if they were sisters, **by virtue** (בְּטוֹבָה) of the law of a *woman and her sister*;

(E) and, if they were both menstruants, **by virtue** (בְּטוֹבָה) of the law of *the menstruant*.⁸⁴

Considering the thematic complexity of this pericope, some explanation of what is going on here, might be of help. Tractate Yebamoth, as Neusner spells out, discusses the following topics:

The levirate connection is null in a case of consanguinity; *halisah* but not levirate marriage; a normal levirate connection, worked out through *halisah* or consummation of the marriage; marriage into the priesthood and the right to eat heave-offering; severing the marital bond; marital ties subject to doubt; the rite of *halisah*; the right of refusal; infirm marital bonds; the deaf-mute, the minor male, severing the marital bond through death of the husband; the woman's testimony; identifying a corpse.⁸⁵

Specifically, according to Neusner, 3:10 falls in a section (1:1 - 5:6) focused on the formation of the marital bond, more precisely, in a sub-section dealing with cases in which the rite of *halitzah*,⁸⁶ but not levirate marriage, is required.⁸⁷ The examples reported in 3:10 concern cases in which two men betrothed two women, and at the time of their entry into the marriage-canopy, the two women were inadvertently exchanged for one another. In all these cases the men are culpable of having a forbidden sexual relation in that they violate one of the cases of Lev. 18:6 – 17; as a result there will be neither levirate marriage nor *halitzah*.

In this very interesting pericope there are four reason-clauses all introduced by the causal particle בְּטוֹבָה. In the first case (B) the reason-clause is directly attached to the main clause (apodosis), in the three other cases, the apodosis is elliptical and the reason-clauses are directly attached to the shifting situational parameters of the protasis displayed in (C), (D), and (E). In other words, in (C), (D), and (E) both a part of the protasis⁸⁸ and the apodosis, are not reported; the apodoses ('culpable') are implied and it is the presence of the reason-clauses which allows to understand them.

As to the other cases of reasons introduced by בְּטוֹבָה, in the remaining cases in Yebamoth the term always introduces a justification which refers to the prohibition to marry relatives belonging to one of the 'forbidden degrees', listed in Lev. 18:6–17.

Fourteen times the term follows and supports exactly the same apodosis i.e., that X is exempt from levirate marriage with Y. Thus, in all encountered places, בְּטוֹבָה is used to introduce a scriptural norm which supports and explains the apodosis, be it expressed explicitly or implicitly, and this also holds for the one case in Baba Metzia, though slightly differently.

(4) B. M. 9:13

If a man takes away the mill-stones, he transgresses a negative commandment, and he is also culpable **by virtue** (בְּטוֹבָה) of taking two utensils together, for it is written (בְּטוֹבָה), *No man shall take the mill and the upper millstone to pledge.* (Deut. 24:6)

The case schema presents a situation (in the protasis) whose legal consequence is the transgression of

84 Ibid. p. 223.

85 Jacob Neusner, "From Scripture to Mishnah. The Origins of Mishnah's Division of Purities," *Journal of Applied Philosophy* 30 (1979): p. 141.

86 Deut. 25:5 – 10.

87 Jacob Neusner, *Il Giudaismo nella Testimonianza della Mishnah* (Bologna: Edizioni Dehoniane, 1995), p. 571.

88 Only the situational factor that has changed appears while the rest of the protasis is presupposed.

two scriptural commandments; both apodoses are justified, the first by the reason-clause introduced by משום while the second by the scriptural quotation introduced by שנאמר.

2.3. הוֹאִיל ו

I have encountered the conjunction הוֹאִיל ו⁸⁹ only seven times in the tractates surveyed, six times in Yebamoth and once in Nedarim. Let us analyse the following example:

(5) Yeb. 15:5

(A) If one said,⁹⁰ ‘He is dead’, and the other said, ‘He has been killed’,

(B) R. Meir says: **Since** (הוֹאִיל ו) they contradict one another neither may marry again.

(C) R. Judah and R. Simeon say: **Since** (הוֹאִיל ו) both admit that he is not alive they may both marry again.⁹¹

The two reason-clauses introduced by the particle הוֹאִיל ו are appended to the two opposed apodoses of the protasis (A), expressed respectively by R. Meir (B) and by R. Judah and R. Simeon (C). The opposition of the apodoses is based on the different evaluation given respectively by R. Meir, and R. Judah and Simeon to the two statements in (A). The reason-clause in (C) actually comprises in itself the argument of R. Meir in that by saying that ‘both admit that he is not alive’ this doesn’t exclude that they may contradict each other as to the modality of the death but this is deemed to be less relevant than the agreement on the fact that the man is no longer alive, which is the actual ‘event’ motivating the apodosis.

2.4. שְׁנֵאמַר

The use of a scriptural quotation as proof-text i.e. as support or warrant for a norm is a very common device of Mishnaic discourse; in this sub-section I will show the various forms introducing a scriptural warrant which I have encountered, and briefly analyse in what way the Mishnah uses Scripture to account for its rulings.

The most frequent expression found in the Mishnah to introduce a scriptural quotation is undoubtedly שְׁנֵאמַר; the term is composed by ש which is the usual particle to introduce causal and final sentences and נֵאמַר, *nif'al* of the verb ‘to say’⁹². It is worth quoting the analysis of this formula made by Samely:

The anchor of this ‘for’ is in the present tense of the Mishnaic discourse, and it is in the present that Scripture speaks to the rabbinic reader. ‘For it is said’ means: if you understand the Lemma⁹³ properly, you have to accept the Dictum as valid. Without such a meaning the ‘for’ has no function. It invites the reader to read the Lemma in the light of the Dictum, to allow the sense of the Dictum and Lemma to converge.⁹⁴

89 This, as Segal points out, is a fossilised verbal expression followed by the copula. Cf. Segal, p. 226.

90 I quote the previous passage in that, though not immediately relevant for my analysis, it makes easier to understand the situation referred to in the reported pericope: ‘[If] one woman [co-wife] says, ‘He died’, and one [co-wife] says, ‘He did not die’, this one who says, ‘He died’, may remarry again and collect her marriage contract, and that one who says, ‘He did not die’, may not remarry and may not collect her marriage contract.’ (Yeb. 15.5).

91 Danby, *The Mishnah*, p. 242.

92 Danby translates the expression as ‘for it is written’ and, having used his translation, I left it as it stands although the correct translation of שְׁנֵאמַר is clearly ‘for it is said’.

93 The terms Lemma and Dictum are defined in the glossary of Samely’s book as follows: ‘Lemma’: Biblical word or phrase which is the focus of the hermeneutic operation. Its message is reformulated in the rabbinic Dictum, together with which it forms the midrashic unit. ‘Dictum’: Formulation of a rabbinic position which, if linked to a biblical quotation (*see* Lemma) forms a midrashic unit.’. In *Rabbinic Interpretation*, pp. 433-34.

94 *Ibid.* p. 64.

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What this passage suggests is that the force of the ψ is to establish the validity of the Dictum but also, that the Lemma is to be read in the light of the Dictum. In other words, the kind of warrant offered by the scriptural quotation to the rabbinic norm, is 'formal' rather than 'substantial', in the sense that it is the voice of the Rabbis which speaks through the scriptural quotation.⁹⁵ This is not to say, as Samely clarifies, 'that Scripture had no influence on the Mishnaic configuration or its terms; but rather, that the Mishnaic configuration retains priority for finding out what the Mishnah means when it tells us, in its own terms, what Scripture means'.⁹⁶

The above should be kept in mind when considering the Mishnaic use of Scripture as warrant for its rules. 'Biblical wording', Samely points out, 'is just one type of *reason* given for the Dicta'⁹⁷ and, he further observes, 'the Mishnah's treatment of the role of Scripture is of a piece with its treatment of warrants in general'.⁹⁸ It might be said that a scriptural quotation, when used as warrant, 'is presented for what it may prove in the discourse of the Mishnah'.⁹⁹

I shall now briefly spell out the different formulary patterns through which a biblical quotation may be introduced, pointing out the fact that not all of them perform explanatory functions.

Let us start with the formula על זה נאמר encountered in Yeb. 9:6 and in B. K. 3:9. In both cases the function of the scriptural quotation is not explanatory, i.e. the biblical verse is not used as a support for a norm. In Yeb. 9:6 the quotation is a sort of specification of the apodosis of the Mishnaic case schema, while in B. K. 3:9 it actually functions as apodosis itself.¹⁰⁰

Of interest is the function performed by the scriptural quotations introduced by the question למה נאמר of which I have found two cases in Baba Kamma.

(6) B. K. 5:5

(A) If he dig a pit in the public domain and an ox or an ass fell into it and died, he is culpable.

(B) No matter whether he digs a pit, trench or cavern or ditches or channels, he is culpable.

(C) Then **why it is written** (למה נאמר), a *pit* [only]? As a pit which is deep enough to cause death is ten handbreadths deep, so any [cavity] is deep enough to cause death if it is ten handbreadths deep.¹⁰¹

(7) B. K. 5:7

(A) An ox and all other cattle are alike under the laws concerning falling into a pit, keeping apart from the mount Sinai, twofold restitution, the restoring of lost property, unloading, muzzling, diverse kinds, and the Sabbath. The like applies also to wild animals and birds.

(B) If so, **why it is written** (למה נאמר), *an ox or an ass* [only]? (Ex. 21:33)

(C) **Because** (ψ) Scripture speaks only of what happens in fact.¹⁰²

95 The question of the Mishnaic use of Scripture is of course more complex than I am presenting here. As Samely points out, a twofold hermeneutic attitude of the Mishnah towards Scripture can be laid out: 'The first of these would appropriate Scriptural wording for a concern contemporaneous with the reader [...]. The second attitude would make Scripture as such the object of attention, and pursue a programme of sustained interpretation across a variety of thematic concerns (the attitude of programmatic exposition)'. For the purpose of this essay it is important to point out that 'The integration of Scriptural words into Mishnaic speech [...] can lead to a blurring of the boundaries between author and reader, as when the biblical term's meaning is 'defined' by the rabbinic voice', *ibid.* p. 81.

96 *Ibid.* p. 68.

97 *Ibid.* p. 397.

98 *Ibid.* p. 398.

99 *Ibid.* p. 66.

100 For a detailed analysis of the formula, see *ibid.* pp. 105-107, and N. A. Van Uchelen, *Chagigah. The Linguistic Encoding of Halakhah* (Amsterdam: 1994).

101 Danby, *The Mishnah*, p. 338.

102 *Ibid.* p. 339.

In both cases the function performed is very similar; in (6) the question in (C) has the function of clarifying the ‘extended apodosis’ in (B) which seems to stand in opposition to Ex. 21:33 which only mentions the case of someone digging a ‘pit’; as Samely writes, ‘the ‘pit’ (בֹּרַר) is taken to stand in for a whole paradigm of holes in the ground’.¹⁰³ Thus the function here is to justify the Mishnaic generalization of the word ‘pit’ as to generically meaning any cavity of at least ‘ten handbreadths deep’.

In (7) again, the question למה נאמר has the function of clarifying the apparent contradiction between the Mishnaic rule and that of the Exodus. The issue is solved by the reason-clause in (C) introduced by the causal particle (ש) which justifies the generalization of the biblical rule made by the Mishnah (A). In saying that ‘Scripture speaks only of what happens in fact’, the argument is made that the scriptural verse is actually like a *ma’aseh* which does not only apply within the boundaries of that case, but rather has to be considered as a legal norm whose application is not limited by the facts of the single case (an ox or an ass).

It is interesting to point out the fact that in example (6) the apparent contradiction between the apodosis in (B) and the scriptural verse in (C) is solved by means of a ‘linguistic’ explanation while in (7), a similar contradiction is solved by generalizing the validity of a scriptural *ma’aseh* concerning an ox or an ass, to a wider category of animals. In both cases, the Mishnah justifies itself for increasing the generality of a scriptural rule.

In the two examples below both from Yeb. 6:6, the two scriptural quotations are expressed respectively by הוּא אוֹמֵר and שְׁנַאֲמַר.

(8) Yeb. 6:6

(A) No man may abstain from keeping the law *Be fruitful and multiply* (Gen. 1:28) unless he already had children:

(B) according to the School of Shammai, two sons; according to the School of Hillel, a son and a daughter,

(C) **for it is written** (שְׁנַאֲמַר), *Male and female created he them* (Gen. 5:2).

(9) Yeb. 6:6

(A) The duty to be fruitful and multiply falls on the man but not on the woman.

(B) R. Johanan b. Baroka says: Of them both **it is written** (הוּא אוֹמֵר), *And God blessed them and God said unto them, Be fruitful and multiply* (Gen. 1:28).¹⁰⁴

The reason in (C) is supporting *beit* Hillel’s opinion that in order to be exempt from the law ‘Be fruitful and multiply’, a man should already have both a son and a daughter; this contrasts with the opinion of the School of Shammai that two sons are enough. Thus in this case biblical wording is called upon to provide a linguistic clarification of the object of the obligation in (A) to whom the apodosis ‘he may abstain from keeping the law...’ would apply.

In example (9) the scriptural verse is used as a reason supporting the implicit dissenting opinion of R. Johanan b. Baroka who argues that the law to ‘be fruitful and multiply’ does not only apply to men but also to women. In both cases the function of the scriptural quotation as a ‘reason’ is self-evident, what it might maybe be remarked upon is that the reason in (8) comes as a subordinate reason-clause appended to the apodosis of the case schema while in (9), the reason comes as an independent clause syntactically connected to the apodictic statement (A)¹⁰⁵ of which it provides a reason.

Finally, there are several cases in which a scriptural quotation is given without any introductory

103 Samely, *Rabbinic Interpretation*, p. 278.

104 Danby, *The Mishnah*, p. 227.

105 Interestingly, the apodosis takes the form of a statement about the scope of a biblical commandment, phrased as an introduction to its quotation.

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formula; in these cases biblical wordings stand as independent sentences and in all the cases encountered provide a reason for the legal rule to which they refer, as in example (10) below.

(10) Yeb. 12,3

(A) If she drew off the shoe and pronounced the words but did not spit,

(B) according to R. Eliezer her *halitzah* is invalid,

(C) but according to R. Akiba it is valid.

(D) R. Eliezer said: [It is written,] *So shall it be done...* (Deut. 25,9), hence aught that is a 'deed' [if unperformed] impairs [the validity of the rite].

(E) R. Akiba answered: [My] proof is from the same verse: *So shall it be done to the man...* (Deut. 25,9); hence [the validity of the rite depends on] any deed that needs to be done to the man.¹⁰⁶

Example (10) is particularly meaningful in that it shows how the same scriptural verse can be used in support of two opposed apodoses as a result of a different interpretation of it.¹⁰⁷ This fact seems thus to confirm the fact that the Rabbis did not use scriptural support in order to provide an historical origin (justification) of the norm, but rather, 'the reason we find [a scriptural warrant] in the Mishnaic discourse is its *argument function*'.¹⁰⁸

3. Reasons not given through reason-clauses. Analysis of selected examples

3.1. קל וחמר

The *a fortiori* inference or קל וחמר¹⁰⁹ is the first of both Hillel's and Ishmael's hermeneutic rules (*middot*).¹¹⁰ It is a kind of analogical argument based on the comparison of two elements, whose functioning can be described as follows:

The mechanism of the inference involves an assignment of (mostly halakhic) categories to the two subjects; a ranking of these categories in a dimension of comparison; and a transfer of what is known about one of them to the other based on its higher rank in the comparison of categories. It is this differential of ranks which leads to the claim that for the second subject the validity, certainty, or

¹⁰⁶ Danby, *The Mishnah*, p. 236.

¹⁰⁷ A similar case can be seen in Terumoth 6:6. See, Halivni, *Midrash, Mishnah, and Gemara*, p. 133 n. 35.

¹⁰⁸ Samely, *Rabbinic Interpretation*, p. 61.

¹⁰⁹ The *qal va-homer*, many scholars pointed out, has its origins already in the *Torah*, more precisely, the 'biblical prototype' is considered Num. 12:14. See for references, David Daube, "Rabbinic Methods of Interpretation and Hellenistic Rhetoric," in *Collected Works of David Daube. Volume One. Talmudic Law*, ed. Calum M. Carmichael (Berkeley: Robbins Collection, 1992)., Bernard S. Jackson, "On the Nature of the Analogical Argument in Early Jewish Law," *Jewish Law Annual XI* (1994)., Hyam Maccoby, *Some Problems in the Rabbinic Use of the Qal va-Homer Argument* (Centre for Jewish Studies, University of Manchester, 18 October 2001, accessed); available from <http://www.mucjs.org/qalvahomer.htm>., Mielziner, *Introduction to the Talmud*, Samely, *Rabbinic Interpretation*. As to the form, it must be said that this type of argument is not always introduced by the expression קל וחמר in the Mishnah. As Samely points out, 'We find passages not using these terms which conform to the same structure as those which do, and the most widespread terminology employs ׀׀׀, 'judgement' or 'inference'. *Rabbinic Interpretation*, p. 176.

¹¹⁰ The קל וחמר is 'the principle of inference *a minori ad maius*, [...] and it is based on the assumption that a rule which applies to some minor matter will be all the more applicable to a comparable matter of major importance. The converse is also assumed. [...] When it applies to issues of current experience, this rule provided a means of building possible (though not necessary) connections back to biblical text; however, it could also be used for simple exegetical purposes to relate one biblical text to another'. Found in W. Sibley Towner, "Hermeneutical Systems of Hillel and the Tannaim: A Fresh Look," *Hebrew Union College Annual*, LIII (1982): p. 113.

reasonableness of the inferred proposition is even *greater* than for the subject from which it is inferred.¹¹¹

In other words, as Mielziner puts it, ‘the principle underlying the inference of קל וחמור is, that the law is assumed to have the tendency to proportionate its effect to the importance of the cases referred to, so as to be more rigorous and restrictive in important, and more lenient and permissive in comparatively unimportant matters’.¹¹²

As to the function, ‘it can be said that the Mishnah uses the *a fortiori* more for probing the consistency of a normative position, or for exploring its consequences, than for categorically determining it’.¹¹³ As Moscovitz points out, ‘analogies are usually adduced in the course of disputes, where the analogy is used to support or to challenge a particular view’,¹¹⁴ as we can see in the example below.

(11) Ned. 10:6

(A) If a woman was awaiting levirate marriage,

(A1) whether there was one brother-in-law

(A2) or two [and one had bespoken her],

(B) R. Eliezer says: He may revoke her vows.

(C) But R. Joshua says: [He may revoke them] when there is but one [brother-in-law], but not when there are two.

(D) R. Akiba says: Neither when there is one nor when there are two.

(E) R. Eliezer says: What! If a man can revoke the vows of a woman whom he has acquired for himself, how much the more must he be able to revoke the vows of a woman whom he has been caused to acquire by Heaven!

(F) R. Akiba answered: No! as thou arguest of a woman whom he has acquired for himself and over whom others have no control, wouldest thou also argue of a woman whom he has been caused to acquire by Heaven and over whom others have still control!¹¹⁵

This complex pericope features a double case schema to the protases of which six different apodoses are given by the three Rabbis. The two protases are: (A1) one brother-in-law, and (A2) two brothers-in-law. In (B) R. Eliezer argues that in both cases (A1) and (A2), ‘he may revoke her vows’; in (C) R. Joshua would allow him to revoke her vows when (A1) is the case but not when (A2); in (D) R. Akiba would not allow to revoke her vows in both (A1) and (A2).

In (E) R. Eliezer supports his position by means of an *a fortiori* argument which establishes a relation *a minori ad maius* between the case of someone that has ‘acquired a woman for himself’ (i) and someone who ‘has been caused to acquire a woman by Heaven’ (ii). The argument is that if in (i) the man can revoke the vow, ‘all the more so’ he must be able to revoke the vow in (ii). In this case, R. Eliezer’s argument is rebutted by R. Akiba by means of another *a fortiori* argument in (F).¹¹⁶

As various scholars have observed, the Rabbis attempted to limit the use of the *a fortiori* inference, and to this end they have laid out three rules: the first is the so called rule of *dayyo* which states that ‘the conclusion must not contain anything that was not present in the premises’.¹¹⁷ The second rule

111 Samely, *Rabbinic Interpretation*, p. 174.

112 Mielziner, *Introduction to the Talmud*, p. 130.

113 Samely, *Rabbinic Interpretation*, p. 176.

114 Moscovitz, *Talmudic Reasoning*, p. 236.

115 Danby, *The Mishnah*, p. 278.

116 It should be remarked that often the Mishnah shows disfavour towards analogical arguments and attempts to limit their validity as sources of law.

117 Maccoby, *Some Problems*, p. 1.

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states that 'The inference from minor to major is not to be applied in the *penal* law', while the third states that 'No inferences must be made from traditional laws to establish a new law.'¹¹⁸

As Urbach points out, there are Mishnaic passages¹¹⁹ affirming very clearly that the validity of *din* (or *kal va-homer*) as a support for a norm has to be limited and preference has to be given to laws derived from tradition 'over laws arrived at through interpretation and debate although interpretation had already been entirely accepted not only as a support for *halakhot* received by tradition but also as a source of law'.¹²⁰

Besides, often both in the Mishnah and in the Talmud, *a fortiori* inferences are rejected; Samely provides an explanation for such cases by arguing that 'Where the *a fortiori* is [...] rejected, the Mishnaic discourse reveals that law is convention or divine commandment, not logic'.¹²¹

3.2. מנהג

I have encountered fifteen cases of *minhag*, concentrated in three of the seven tractates surveyed. Grammatically and syntactically these are expressed in various ways and the same goes for the function which they perform. Before proceeding to the analysis of some examples, I shall make some brief comment on *minhag* as a legal source of law.¹²²

The term מנהג is by Jastrow translated as 'conduct', 'manner', and 'usage',¹²³ but it is often also translated as 'custom' or 'tradition'.¹²⁴ Peretz Segal translates *minhag* as 'custom', defining it as 'the source of those practices which developed over time independently of the scriptures,¹²⁵ and which 'were given obligatory status by the Sages'.¹²⁶ Thus, several laws, as Urbach points out, 'have their source in custom'.¹²⁷

A custom does not come into existence by itself but rather, as Urbach further remarks, 'Decisions handed down in actual court cases, instructions issued by priests or kings, deeds which were done – all could become customs accepted as obligatory and then be transformed into permanent, fixed *halakhot*'.¹²⁸ But not all customs had the fortune to be generally accepted, some had in fact just local validity; these are normally referred to as either מנהג המדינה¹²⁹ or הלכות המדינה.¹³⁰ Others, to which great importance was attributed, were those practised by individuals of great authority. This is for instance the case of Baba Metzia 5:8.

(12) B. M. 5:8

(A) The owner may lend his tenants wheat to be repaid in kind, if it is for sowing, but not if it is for food;

118 Mielziner, *Introduction to the Talmud*, pp. 134 ff.

119 See for instance Yeb. 8:3, and Ker. 3:9.

120 Urbach, *The Halakhah*, p. 92.

121 Samely, *Rabbinic Interpretation*, p. 186.

122 I use the expression 'legal source of law' according to the definition given by Elon: '[...] a legal source of Jewish law is that channel recognized by the Jewish legal system as a route through which a rule becomes accepted as part of the system's *corpus juris*'. Elon., vol. II, ch. 24, p. 987.

123 Jastrow, p. 797.

124 See for instance Elon., and *An Introduction to the History and Sources of Jewish Law*, ed. N. S. Hecht; B. S. Jackson; S. M. Passamanek; D. Piattelli; A. M. Rabello (Oxford: Oxford University Press, 1996).

125 In this sense *minhag* stands in opposition to 'midrash as interpretation of scriptural verses in order to derive laws from them'. As found in Peretz Segal, "Jewish Law During Tannaitic Period," in *An Introduction to the History and Sources of Jewish Law*, ed. N. S. Hecht; B. S. Jackson; S. M. Passamanek; D. Piattelli; A. M. Rabello (Oxford: Oxford University Press, 1996), p. 108.

126 Ibid. p. 111.

127 Urbach, *The Halakhah*, p. 32.

128 Ibid. pp. 32-33.

129 See for instance B. M. 7:1 and 9:1.

130 See for instance B. M. 7:8.

(B) **for** (וְ) Rabban Gamaliel used to lend his tenants wheat to be repaid in kind when it was for sowing;

(C) and if he lent it when the price was high and it afterward fell, or when it was low and it afterward rose, he used to take wheat back from them at the lower rate – **not because** (וְלֹא מִפְּנֵי שֶׁ) such was the rule,

(D) but **because** (וְ) he was minded to apply to himself the more stringent ruling.¹³¹

In this interesting *mishnah* the two apodoses in (A) and (C) are explained on the basis of what Rabban Gamaliel used to do; thus, a personal behaviour is here elevated to the level of a *minhag* and hence to a source of law.¹³² Interestingly, in (C) it is clearly pointed out that the *ratio legis* is not a rule but instead the actual willing behaviour of Rabban Gamaliel. Urbach reports the fact that ‘as long as Rabban Gamaliel was alive, the law was practised according to him [...]’.¹³³ When Rabban Gamaliel died, an attempt was made by R. Joshua to annul his rulings but his attempt was unsuccessful, he was in fact rebutted by R. Johanan b. Nuri who told him: “As long as Rabban Gamaliel was alive the law was practised according to him, now that he is dead you desire to annul his words?! Joshua! We will not listen to you!” The law was fixed according to Rabban Gamaliel and nobody objected’.¹³⁴ I cannot state with certainty that the passage reported by Urbach applies in this very case; the point here was just to indicate the existence of ‘individual’ customs and that ‘objections could be made even to laws which were practised but that once the law was fixed it could not be changed’.¹³⁵

In the previous example, the value of the ‘custom’ as a reason clearly emerges, but it is not always like this, even though the function a *minhag* performs does not depend on the formal way in which it is expressed. In what follows I shall analyse one example of ‘explanatory custom’ for each of the expressions encountered; these are: a) דָּרֶךְ בְּנֵי אָדָם, b) מִקּוֹם שֶׁ, and c) הַכֵּל כַּמְנַהֵג הַמְדִינָה.

The first example is taken from tractate Baba Kamma.

(13) B. K. 6:5

(A) And the Sages agree with R. Judah that if a man set fire to a large building he must make restitution for everything therein;

(B) for such is **the custom** (שֶׁכֵּן דָּרֶךְ בְּנֵי אָדָם) among men to leave [their goods] in their houses.¹³⁶

Here the custom is clearly a reason, although elliptical, in that it does not directly refer to the norm but rather to the knowledge of the perpetrator that if he sets fire to a building it is likely that people’s belongings will burn together with it ‘for such is the custom...’. The *minhag* is introduced by the causal particle שֶׁכֵּן which links the reason-clause to the apodosis of the case schema and the custom, expressed by דָּרֶךְ בְּנֵי אָדָם, is used to account for the apodosis, ‘he must make restitution for everything therein’, in (A). In this case the custom in (B) has a factual (descriptive) function¹³⁷ in that

131 Danby, *The Mishnah*, p. 357.

132 This is an example of what Urbach defines as ‘custom of individuals’, (*The Halakhah*, p. 38) implying by that the recognition that usually *minhag* are either ‘collective’ or ‘anonymous’. In this case it is not easy to distinguish between *minhag* and *ma’aseh* and one could be tempted to classify it as a *ma’aseh* which literally means ‘action’, but I prefer to consider it a *minhag* because of the sense assumed by the term *ma’aseh* in Tannaitic literature as ‘judgement’ thus referring to judicial activity as opposed to positive legal provisions resulting from some law-creating function. See Segal, "Jewish Law During Tannaitic Period," pp. 106 ff.

133 Tosefta Ta’anit 2:5. Ref. found in Urbach, *The Halakhah*, p. 38 n. 20.

134 Tosefta Ta’anit 2:5 in *ibid.* p. 38 n. 20.

135 *Ibid.* p. 38.

136 Danby, *The Mishnah*, p. 340.

137 I would like to mention in passing that ‘*derekh*’, as Jackson points out, ‘in some tannaitic sources had *prescriptive* overtones; it referred not only to the way a phenomenon usually behaves, but also to the standard normally expected of it’. See Bernard S. Jackson, "Maimonides' Definitions of *Tam* and *Mu'ad*," *Jewish Law Annual* Vol. 1 (1978): p. 174.

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it depicts something which is appropriate (natural) for a person (thing, or animal) to do.¹³⁸ Daube points out that ‘the concept of *derekh* (דֶּרֶךְ), “way”, “manner”, “nature”, plays an enormous part in Tannaitic literature. Each individual thing, person, animal, class, profession or action has its appropriate, peculiar *derekh*, in the view of the Tannaites.’¹³⁹ Daube further remarks that “‘the manner”, the appropriate qualities and course to be expected of a thing, person, or action, determines countless decisions throughout all branches of law [...]’.¹⁴⁰

The next example, taken from Baba Metzia is particularly significant as we shall see below.

(14) B. M. 9:1

- (A) If a man leased a field from his fellow and **the custom**¹⁴¹ (מִקּוּם שׁ) of the place was to cut the crops,
- (B) he must cut them;
- (C) if **the custom** (מִקּוּם שׁ) was to uproot them
- (D) he must uproot them;
- (E) if **the custom** (מִקּוּם שׁ) was to plough after reaping,
- (F) he must plough.
- (G) Everything should follow local use (הִכָּל כַּמְנַהֵג הַמְדִינָה).¹⁴²

In this pericope composed of three case schemata, we find two different expressions to introduce a custom: מִקּוּם שׁ and הִכָּל כַּמְנַהֵג הַמְדִינָה.¹⁴³ The first one is used as a subordinate sentence while the second is an independent sentence that, both in form and in function, recalls the expression זֶה הַכֹּל. It is interesting to note that in (A), (B), and (C), the מִקּוּם שׁ, which is part of the protasis, might be defined as descriptive, and it is the apodosis, in (B), (D), and (F), which makes it normative thus working as a reason. If this holds, then (G) gives the general rule or explanation for the fact that, in this series of instances, certain practices are made normative.¹⁴⁴

3.3. מַעֲשֵׂה

In the seven tractates surveyed I have found twelve cases of מַעֲשֵׂה, four in tractate Yebamoth,¹⁴⁵ one in Ketuboth,¹⁴⁶ four in Nedarim,¹⁴⁷ one in tractate Baba Kamma,¹⁴⁸ and two in Baba Metzia.¹⁴⁹ Before analysing some of the cases encountered, I shall briefly introduce the *ma'aseh* as a source of Jewish Law.

As Peretz Segal points out, ‘In tannaitic jurisprudence, the term *halakhah* comes to stand in

138 The concept of *derekh* is comparable to the notion of *natura* in Roman law, which derives from the teleological conception of nature developed by Aristotle. For better insights into the relationship between *derekh* and *natura*, see again Jackson, quoted above.

139 David Daube, "Negligence in the Early Talmudic Law of Contract," in *Collected Works of David Daube. Volume One. Talmudic Law*, ed. Calum M. Carmichael (Berkeley: Robbins Collection, 1992), p. 324.

140 Ibid. p. 325.

141 Literally the expression means ‘a place which’ but it is translated (interpreted) by Danby as ‘custom’.

142 Danby, *The Mishnah*, p. 362.

143 It has to be stressed that the Hebrew word ‘*minhag*’ appears only in (G).

144 Jackson in personal correspondence.

145 Yeb. 6:4 and 16:4.

146 Ket. 7:10.

147 Ned. 6:6, 9:5, 9:8, and 9:10.

148 B. K. 8:6.

149 B. M. 7:1 and 8:8.

opposition to the term *ma'aseh* (literally, action) which refers to a judgement'.¹⁵⁰ The distinction between *halakhah* and *ma'aseh* corresponds to that between a positive legal provision and a judicial decision, that is, between the function of legislation and that of adjudication.¹⁵¹ To account for the difference between *halakhah* and *ma'aseh* Segal reports the case in Yeb. 15:2 where there is a dispute between the Houses of Hillel and Shammai as to the validity of a *ma'aseh*.¹⁵² Segal writes: 'Thus the House of Hillel initially teach that the law reflects a decision exclusively within the facts of the initial case, but the House of Shammai argue that the case pronounces a legal norm (i.e. a *halakhah*) which is to be inferred from the judgement and should, therefore, not be limited in application to the facts of that case'.¹⁵³

However, Segal further points out that 'the fact that it is the recognized function of the Sages to pronounce the Law renders any distinction between *halakhah* and *ma'aseh* irrelevant and impracticable'.¹⁵⁴ This also seems to be the opinion of Urbach when he writes that '*ma'aseh*, connotes a decision handed down by a court or an authorized sage. This decision, or *gezar din*, becomes a precedent and thus a *halakhah*'.¹⁵⁵ The Mishnah redacted by R. Judah Ha-Nasi contains 'both laws which originate in court precedents and laws which are the result of study and the give-and-take of the study hall',¹⁵⁶ and in this sense there is no real difference between the two.¹⁵⁷ Thus, by the time of the redaction of the Mishnah the distinction between *ma'aseh* and *halakhah* has lost its practical relevance. Nonetheless, as we shall see below sometimes a *ma'aseh* is brought forth in support of a legal decision or, in support of a dissenting opinion of the Sages, and in this sense it performs an explanatory function and can thus be taken as relevant to my definition of reason given above.

Let us begin with the analysis of a case where the *ma'aseh* performs a 'pure' explanatory function, taken from tractate Yebamoth.

(15) Yeb. 6:4

(A) If he had betrothed a widow and was afterward appointed High Priest,

(B) he may consummate the union.

(C) **It once happened** (וְיָמַעַשׂ) that Joshua b. Gamla betrothed Martha the daughter of Boethus, and he consummated the union after that the king appointed him High Priest.¹⁵⁸

The protasis (A) of the case schema deals with a case of a High Priest that betrothed a widow before being appointed High Priest. The apodosis (B) declares the union valid, despite the prohibition in Lev. 21:14. The *ratio* seems to be already present in the protasis i.e. he may 'consummate the union' because he betrothed the widow before being appointed. The *ma'aseh* in (C) seems to be performing the function of supporting (and explaining) the apodosis, although only in the case that Martha was indeed a widow, and this may just be supposed, since it is not explicitly stated by the text in (C).

150 Segal, "Jewish Law During Tannaitic Period," p. 106.

151 For further observations on the distinction between legislation and adjudication in conceptual terms, and for its application to biblical material, see Bernard S. Jackson, "Legalism and Spirituality: Historical, Philosophical, and Semiotic Notes on Legislators, Adjudicators, and Subjects," in *Religion and Law: Biblical-Judaic and Islamic Perspectives*, ed. Bernard G. Weiss, Edwin R. Firmage, John W. Welch (Winona Lake: Eisenbrauns, 1990).

152 The same example is also quoted by Urbach, *The Halakhah*, p. 80.

153 Segal, 'Jewish Law During Tannaitic Period', pp. 106-07.

154 Ibid. p. 107.

155 Urbach, *The Halakhah*, p. 77.

156 Ibid. p. 125.

157 It might be useful to remind us of what Mielziner writes about *ma'aseh*: 'The Mishnah sometimes adds to its rule of law or to its opinions of the contesting teachers the report of a certain case in which a celebrated authority gave a decision either 1) in accordance with or 2) in contradiction to the rule just laid down or the opinion just expressed. Such a report is usually introduced by the word וְיָמַעַשׂ it is a reported fact that... , it once occurred that...'.
Introduction to the Talmud, pp. 193-94.

158 Danby, *The Mishnah*, p. 227.

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Different is the case featured in the example (16) below taken again from Yebamoth.

(16) Yeb. 16:4

(A) If a man had fallen into the water, whether or not within sight of shore, his wife is forbidden [to marry another].

(B) R. Meir said: **Once** (בפעם אחת) a man fell into a large well and came up again after three days.

(C) But R. Jose said: **Once** (בפעם אחת) a blind man went down into a cave to immerse himself and his guide went down with him; and they waited time enough for life to become extinct and then permitted their wives to marry again.

(D) Again **it once happened** (בפעם אחת) in Asya that a man was let down by a rope into the sea and they drew up again naught save his leg.

(E) The Sages said: If [the part of the leg recovered] included the part above the knee his wife may marry again;

(F) but if only the part below the knee she may not marry again.¹⁵⁹

In this pericope we have three different occurrences of *ma'aseh*¹⁶⁰ which interestingly perform three distinct functions. It has to be remarked here that the expression '*ma'aseh*' is used here to signify both a literary unit and a judicial decision.

The first *ma'aseh* in (B), reported by R. Meir, supports and justifies the apodosis of the case schema in (A) and thus performs a similar function as the one in the previous example (15) above.¹⁶¹ The second one in (C) is brought by R. Jose as a support for his dissenting opinion in relation to the apodosis in (A).¹⁶² Here there are displayed the two main functions performed by the *ma'aseh*, i.e. to provide a proof for the law, but also to testify the existence of an opposing opinion.¹⁶³

The third *ma'aseh* in (D) has no such explanatory function (either in agreement or in dissent) but rather it is used as a little narrative which creates the setting for the protasis of the following case schema. So, it is thematically linked to the two other *ma'asim* but it does not function as an explanation that is, it is not used as a source of law. Also (B), not being an actual *ma'aseh* does not really function as source of law even though it is still used as a 'reason' supporting R. Meir's opinion in agreement with the apodosis in (A).

3.4. זה הכלל

A particular type of reason-clauses are statements of the form, 'this is the general rule', 'which are usually appended as generalizations to a concrete set of case schemata'.¹⁶⁴ Reason-clauses of this type, whose character as generalizations is immediately evident, 'reflect a non-casuistic approach to legal formulation, which contrasts with the dominant approach to tannaitic legal formulation'¹⁶⁵ which is mainly casuistic. However, as Urbach points out, 'even those laws which are formulated as general

¹⁵⁹ Ibid. p. 244.

¹⁶⁰ The episode reported by R. Meir in (B) is not a regular a *ma'aseh* because no legal decision is reported or taken as a result of it, as for instance in (C).

¹⁶¹ In Ned. 9:8 the *ma'aseh* is an actual decision of R. Meir which is placed there in support of the apodosis of the previous case schema.

¹⁶² In Ned. 6:6, B. K. 8:6, and B. M. 8:8 the *ma'asim* are also reported in support of a dissenting opinion. Interestingly, in B. K. 8:6 the *ma'aseh* carries the dissenting opinion of R. Akiba in relation not to a single case schema but rather to a general rule expressing a general principle.

¹⁶³ Urbach, *The Halakhah*, p. 125.

¹⁶⁴ Samely, 'Delaying the Progress from Case to Case', p. 125.

¹⁶⁵ Moscovitz, *Talmudic Reasoning*, p. 50.

rules never achieve true abstraction but remain attached to their source'.¹⁶⁶ General rules normally have the function to remove 'the specific limiting details of the cases on which they were based',¹⁶⁷ nonetheless, it is not always clear what do they add to the specific case they are appended to.¹⁶⁸ But, as we shall see in the next section, often 'general rules' also perform clear explanatory functions and it is for this reason that I have included them in this study.¹⁶⁹

In the seven tractates surveyed I have found ten cases where a 'general rule' is provided;¹⁷⁰ from a syntactic point of view, 'general rules' are independent sentences, that is, they are not syntactically linked to the norm they are supposed to explain. In nine out of ten cases encountered 'general rules' come at the end of a pericope and are introduced by the formula *זה הכלל*. In Yeb. 2:3 the general rule is placed at the beginning of the pericope and in this case is introduced by the formula *בלל אמרו*.¹⁷¹

I shall now briefly analyse an example of general rule leaving more detailed observations for next section where discourse functions will be considered; it comes from tractate Demai.

(17) Dem. 7:7

- (A) If a hundred parts of untithed produce [were mixed with] a hundred parts of produce already tithed,
- (B) a hundred and one parts must be taken out [as untithed produce].
- (C) If a hundred parts of untithed produce [were mixed with] a hundred parts of Tithe,
- (D) a hundred and one parts must be taken out [as Tithe].
- (E) If a hundred parts of duly tithed produce [were mixed with] a hundred parts of Tithe,
- (F) a hundred and ten parts must be taken out [as Tithe].
- (G) If a hundred parts of untithed produce [were mixed with] ninety parts of Tithe, or ninety parts of untithed produce with eighty parts of Tithe
- (H) naught is lost.
- (I) **This is the general rule** (*זה הכלל*): when the greater part is untithed produce naught is lost.¹⁷²

The problem dealt with in this unit concerns the possibility to separate tithes 'from a mixture of tithed and untithed produce'.¹⁷³ The general rule is placed at the end of a long pericope composed by a series of four case schemata¹⁷⁴ constructed according to the 'principle of the minimal critical differences between protases' in that the thematic progression is 'achieved by varying *one by one* the parameters

166 Urbach, *The Halakhah*, p. 177.

167 Ibid. pp. 177-78.

168 To this regard, Mielziner notices the fact that 'The Gemara usually investigates the necessity of this general rule by asking: *ל מהו זה?* what is this to add? i.e. which new cases is this general rule to imply besides those explicitly stated in the details of the law?'. *Introduction to the Talmud*, p. 194.

169 As Moscovitz comments, there is a close relation (though not identity) between explanation and generalization. Cf. *Talmudic Reasoning*, p. 201.

170 'Eighty-five [in the whole Mishnah] have been enumerated by J. E. Ephraïm, *The Sevoraiic Period and its Literature* (Hebrew) (Petah Tikva, 1973), p. 159, n. 1; in Zlotnick, *The Iron Pillar*, p. 26, n. 11.

171 As Moscovitz points out, there are four principal terms used in tannaitic literature to introduce generalizations: '*ze ha-kelal* [...], *kelal amar Rabbi X* [...], *kelal 'ameru* [...], and *kelalo shel davar* [this last term appears only in the Tosefta]'. *Talmudic Reasoning*, pp. 52-3. Actually there also have to be included in Moscovitz's list the generalizing particles *כל* and *הכלל*. These last two terms are not specifically considered here, because they mostly function as 'generalizations' rather than as 'explanations'.

172 Danby, *The Mishnah*, p. 28.

173 Richard S. Sarason, *A History of the Mishnaic Law of Agriculture: A study of the Tractate Demai*, ed. Jacob Neusner, Studies in Judaism in Late Antiquity, vol. XXVII (Leiden: E. J. Brill, 1979), p. 261.

174 The case schema in (G) is actually formed by two protases sharing the same apodosis.

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of the situation in which the legal obligation applies from case to case'.¹⁷⁵ The pericope is characterized both by verbal ('were mixed with') and nominal ellipsis ('as untithed produce' and 'Tithe') which have the effect of increasing the textual cohesion.¹⁷⁶

The general rule, though thematically related to the all pericope, clearly refers just to the last case schema; the first part of the general rule expresses in more general and abstract terms the content of the two protases in (G), while the second part of (I) repeats exactly the apodosis of the case schema (H). Thus, in Sarason's opinion, the general rule here explains the case expounded in the protases in (G) and expands the validity of the apodosis to each case in which 'the quantity of untithed produce in the mixture sufficiently exceeds that of the first tithe'.¹⁷⁷

175 Samely, 'Delaying the Progress from Case to Case', pp. 104-05.

176 Van Uchelen., pp. 65 ff.

177 Sarason, A History of the Mishnaic Law of Agriculture, p. 262.

PART II

DISCOURSE ANALYSIS

1. *Analysis of selected examples: co-textual relations*

After having analysed, in the previous part, the different types of ‘reasons’ from the point of view of word analysis, that is, from a grammatical and semantic standpoint, in this part I shall look at the scrutinized material from the perspective of discourse analysis. I shall study a number of relevant examples with a view to clarifying the underlying patterns, the relations of the ‘reason’ with its co-text and context i.e. how wide the validity of the reason extends, and the type of function performed by the reason-clause. I shall also try to point out, case by case, the various features of the term ‘reason’ identified in the introduction. The selection of the examples reported below has been done on the basis of the relevance of the passages in relation to the just stated criteria.

In section 2, I will summarize and analyse the results of this section attempting to point out regularities and discourse functions.

I shall begin with four examples containing the formula *זֶה הַכֵּלֵל*¹⁷⁸ because I have noticed that passages of this type feature distinct characteristics and it is worth considering them together.

As already mentioned in the previous section, it is not always easy to consider ‘general rules’ as reasons in that, if sometimes it is fairly simple to detect a causal relation with what precedes, in other cases it seems as though the general rule does not perform any causal function but rather, just increases the level of generality of what it refers to.

Example (1) is taken from tractate Horayoth and it seems to me particularly interesting for several reasons, as I will attempt to explain below.

(1) Hor. 1:1

(A) If a the court gave a decision contrary to any of the commandments enjoined in the Law and some man went and acted at their word [transgressing] unwittingly,

(B) whether they acted so and he acted so together with them, or they acted so and he acted so after them, or whether they did not act so but he acted so,

(C) he is not culpable, **since** (*מִפְּנֵי שׁ*) he depended on the [decision of the] court.

(D) If a the court gave a decision [contrary to the Law] and one of them knew that they had erred, or a disciple that was himself fit to give a decision [knew that they had erred], went and acted at their word,

(E) whether they acted so and he acted so together with them, or they acted so and he acted so after them, or whether they did not act so but he acted so,

(F) such a one is culpable, **since** (*מִפְּנֵי שׁ*) he did not depend on the [decision of the] court.

(G) **This is the general rule** (*זֶה הַכֵּלֵל*): he that can depend on himself is culpable, but he that must depend on the court is not culpable.¹⁷⁹

Tractate Horayoth deals in general with ‘occasions when individuals or the majority of the people have

178 We saw above that general rules can be placed either at the beginning or at the end of a pericope and that a different introductory expression is used in the two cases. Referring to R. Ishmael’s thirteen *middot* Zlotnick points out that ‘if the law is expressed as a *kelal* and *perat*, that is, in general terms followed by specifics, the law is limited to those specifics’ but, ‘if specifics are followed by a general statement, the law is to be expanded’. *The Iron Pillar*, p. 27. I’m not claiming here that there is a connection between the *middot* and this aspect of mishnaic discourse structure though this, as suggested by Jackson, would probably deserve further investigation.

179 Danby, *The Mishnah*, pp. 461-62.

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been led into transgression through a wrongful decision of the Sanhedrin'.¹⁸⁰ The tractate is entirely based on Lv. 4, and as pointed out by Neusner it is not possible to understand it without precise reference to the passages in Leviticus. The Mishnah, Neusner further remarks, just provides explanations and definitions of the scriptural data,¹⁸¹ whose knowledge is therefore presupposed. According to Neusner's thematic index, chapter one deals with offerings presented as a consequence of wrongful decisions by the court.¹⁸²

From a formal point of view, the pericope is composed of two case schemata, the two protases (A) and (D) differ from one another for the variation of a situational parameter which determines the shift in the apodoses constructed on the opposition culpable/not culpable in (F) and (C). To the two apodoses is appended a reason-clause which explains the halakhic decision on the basis of the relation of dependence (or independence) of the agent in relation to the wrongful decision of the court.

Interestingly, the general rule just repeats the single reasons appended to the apodoses (C) and (F) and it is worked out inductively from the case schemata to which it refers.¹⁸³

From this case we gain the impression that the provision of the 'general rule' might be redundant for two reasons:¹⁸⁴ first, because of the strong overlap between the reason-clauses and the *זה הכלל*, and second, because the principle functioning behind the case schemata would be comprehensible also in the absence of the general rule.¹⁸⁵ But, another explanation can be proposed to account for that redundancy, an explanation that would make sense and justify the presence of the *זה הכלל*. Following an observation made by A. Samely¹⁸⁶ I suggest that the two reason-clauses in (C) and (F) underwent a functional transformation whose effect is that they cease to be reasons and become the protases of a double case schema with ellipsis:

If he can depend on himself [and did the acts mentioned above], then is culpable; if he has to depend on the court, then he is not culpable.

This is the general rule (*זה הכלל*): he that can depend on himself is culpable, but he that must depend on the court is not culpable.

In this case the presence of the general rule would be 'justified' in that it would have the function of making explicit the principle behind, and of increasing the generality of, the double set of case schemata.

The question that can be asked is if the validity of the general rule extends also to the case schemata that follow or, in other words, if a hierarchical relationship can be detected between the 'general rule' and its co-text. Although there is a strong thematic coherence with the case schemata in 1:2-5, all dealing with wrongful decisions of the court, it seems to me that these are not specifications of the case in 1:1 but rather, they are similar cases standing on the same level of generality.¹⁸⁷

In this example it is easy to identify the 'general rule' as a 'reason', in that the causal relation between the apodoses and the 'general rule' emerges quite clearly, and it would be the same also in case of the absence of the specific reason-clauses in (C) and (F). We will see in the example (2) that it is not always like this in that, in other cases a causal relation between the general rule and the halakhic evaluation is not so easily detectable.

180 Ibid. p. 461 n.18.

181 Neusner, *Il Giudaismo nella Testimonianza della Mishnah*, p. 342.

182 Ibid. p. 575.

183 The identity of the general rule with the two reason-clauses is not formal but surely it is substantial.

184 On the other hand, Zlotnick finds superfluous the lists in (B) and (E) in that if just the last element of the list had been stated, it would have been possible to arrive at the other elements by logical inference. According to him all elements are nevertheless included in the text because 'this is part of mishnaic style'. Cf. *The Iron Pillar*, pp. 97-98.

185 To account for the presence of a general rule which appears to be superfluous, some scholars proposed diachronic explanations; see among others: Ze'ev W. Falk, *Law and Religion. The Jewish Experience* (Jerusalem: Mesharim Publishers, 1981), p. 183., Moscovitz, *Talmudic Reasoning*, pp. 50 ff.; Urbach, *The Halakhah*, pp. 177 ff.

186 Samely in personal correspondence.

187 Samely, 'From Case to Case', p. 236.

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(2) B. K. 9:1

- (A) If a man stole wood and made it into utensils, or wool and made it into garments,
(B) he makes restitution according to [the value of the stolen property at] the moment of the theft.
(C) If he stole a cow that was with young, and it then brought forth young, or an ewe ready to be sheared, and he then sheared it,
(D) he repays the value of a cow about to bear young, or of an ewe ready to be sheared.
(E) If he stole a cow, and while it remained with him it was impregnated and bore young, or [if he stole] a ewe, and while it remained with him it grew its wool and he *sheared* it,
(F) he makes restitution according to [the value at] the moment of the theft.
(G) **This is the general rule** (זוה הכלל): all thieves make restitution according to [the value at] the moment of the theft.¹⁸⁸

Chapter nine of Baba Kamma which is based on Lev. 5:20 ff. and Num. 5:5 ff. deals in general terms with ‘the case where you first deny but then confess that you have stolen or in some other manner acquired control of my property’.¹⁸⁹ More specifically (in 9:1 ff.) the text deals with restitution of what has been stolen, and with the problem of determining the exact restitution when the value of the stolen object has changed during the time it was under the control of the thief.

The pericope under analysis is made up by three case schemata (A)-(B), (C)-(D), (E)-(F) all featuring the same apodosis. In (B) and (D) the sameness is both formal and substantial while in (F) it is only substantial; the underlying principle is that, no matter whether the value of the stolen object increases as in (A) and (E), or decreases (C) during the time of its ‘captivity’, the restitution has to be made according to the value at the moment of the theft.

In the previous example, we noticed that the general rule was a repetition of the reason-clause appended to the apodoses, while here the general rule repeats the apodoses of the case schemata (B), (D), (F). In example (1), despite its redundancy, the explicative ‘power’ of the general rule was higher than in this case where, rather than providing an explanation the general rule mainly increases the degree of generality of the apodoses without really accounting for them.¹⁹⁰ It seems obvious that the effect of the general rule extends anaphorically to the case schemata which precede it.

This example is particularly interesting as to the co-textual relations between the general rule and the ‘surroundings’ case schemata (in 9:1 and 9:2).

(2.1) B. K. 9:2

- (A) If he stole a beast and it grew old [while it remained with him], or bondmen and they grew old,
(B) he makes restitution according to [their value] at the time of the theft.
(C) R. Meir says: As for bondmen, the thief may say to the owner, ‘Here before thee is what is thine’.
(D) If he stole a coin and it cracked, or a fruit and it rotted, or wine and it turned sour,

¹⁸⁸ Danby, *The Mishnah*, pp. 343-44.

¹⁸⁹ The mention by Daube of ‘denying and confession’ stems from the fact that the Mishnah here uses the verb גזל (and not גנב) which carries a direct reference to the passage in Leviticus where the situation of someone first denying and then confessing is explicitly expressed. David Daube, "The Civil Law of the Mishnah: The Arrangement of the Three Gates," in *Collected Works of David Daube. Talmudic Law*, ed. Calum M. Carmichael (Berkeley: Robbins Collection, 1992), p. 279.

¹⁹⁰ I mean by this that the function the ‘general rule’ performs is simply to make explicit the principle behind the preceding case schemata, but not the reason that might be used to justify that principle.

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(E) he must make restitution according to [the value at] the time of the theft.

(F) But if he stole a coin and it went out of use, or Heave-offering and it become unclean, or leaven and the season of Passover arrived, or a beast and it was used for transgression or became unfit to be offered on the Altar or was condemned to be stoned,

(G) he may say to the other, 'Here before thee is what is thine'.¹⁹¹

The first two case schemata, presenting the same apodosis of the case schemata in 9:1,¹⁹² seem to be ruled by the same principle at work in 9:1, and the question arises why these are placed after the general rule. What is in fact the meaning of the expression *כל הגנלים* which follows the *זה הכלל*? Should we assume that the 'thieves' in the firsts two case schemata in 9:2 are considered in the *כל הגנלים* in 9:1 (G)? Why does the Mishnah write 'all thieves' and not 'in these case of theft'? Is there a different principle acting behind the case schemata in (2) and the case schemata (A)-(B), (D)-(E) in (2.1)? Apparently not, in fact, it seems as though the transition to another legal principle occurs only from the last case schema (F)-(G)¹⁹³ in (2.1) as demonstrated by the different apodosis.¹⁹⁴ For my purpose is not immediately relevant to engage in the hermeneutic task of finding the principle of law but rather, it is important to point out the complex co-textual relations and the effect on the reader of the Mishnaic implicitness.

In the two examples examined so far (1) and (2) we have seen that the general rule was a repetition either of the 'reason' provided (1) or of the apodoses of the preceding case schemata (2) in both examples the general rule performed an explanatory function though, as we have seen, of very different type.

In the next example (3) I will analyse a case where the general rule (E) but also (G) directly refers to the protases. In (E) 'whatsoever has a set duration' refers to the protases of (A), (B), (C), and (F) that is to 'Passover' and 'Tabernacles', while in (G) 'whatsoever has not a set duration' refers to the case schema in (D), i.e. 'harvest' or 'vintage'.

(3) Ned. 8:2-3

(A) [If he said,] '...until Passover', it is forbidden him until Passover is come;

(B) [if] 'until it is [Passover]', it is forbidden him until Passover is over;

(C) [if] 'until before Passover', R. Meir says: It is forbidden him until Passover is come. But R. Jose says: Until it is over. (8:2).

(D) [If he said,] '... until harvest', 'until the vintage', 'until the olive-gathering', it is forbidden him only until these times are come.

(E) **This is the general rule** (*זה הכלל*): whatsoever has a set duration, and a man has said 'until it is come', his vow is binding until that time is come.

(F) If he said, '...until it is [Passover or the Feast of the Tabernacles]', it is binding until the season is over.

(G) And whatsoever has not a set duration, whether a man has said 'until it is', or 'until it is come', his

191 Danby, *The Mishnah*, p. 344.

192 'He makes restitution according to [the value of the stolen property at] the moment of the theft'.

193 And possibly in (C) where, according to R. Meir, the principle applying to (F)-(G) applies also for the case of bondmen depicted in the protasis (A).

194 Danby remarks that the apodosis in (G) is motivated by the fact that 'He is not answerable for loss of value which he could not anticipate'. See *The Mishnah*, p. 344 n. 6.

vow is binding only until the season is come.¹⁹⁵ (8:3).¹⁹⁶

Thematically, the *mishnayot* in the example above belong to the second main section of tractate *Nedarim* dealing with the binding effects of vows (4:1–8:6), and more specifically to the last subsection concerning the time limitation of vows (7,6–8:6).¹⁹⁷

Ned. 8:2 (A), (B), (C) is formed by three short case schemata characterised by a strong thematic coherence with 8:1, coherence which is accentuated by the use of ellipses in the protases. The protases in 8:2-3 all deal with the making of a time-limited vow, be it to abstain from drinking wine as in 8:1 or whatever else. The halakhic problem consists in clarifying the exact meaning of time expressions like ‘today’, ‘this week’, ‘until Passover’ ‘until it is Passover’ or ‘until harvest’, in order to clear any doubt as to the exact moment until which a vow is binding.

Mishnah 8:3 contains two general rules, the first, (E) is introduced by the explicit formula **זֶה הַכֹּלֵל** while the second (G) without formula but with the generalizing particle **כֹּל**. Both (E) and (G) provide two more general categories for the various time-terms featured in the protases, which stand in semantic opposition: ‘whatsoever has a set duration’ and ‘whatsoever has *not* a set duration’.¹⁹⁸ These form two opposed protases of two case schemata (which follow the generalizing formula) whose apodoses are also in opposition to one another.¹⁹⁹

Remarkably, (E) and (G) are interrupted by a case schema (F) which is an exact repetition of the case schema in (B);²⁰⁰ I believe that repeating it exactly after the general rule it is a way of ‘increasing’ its degree of generality. Interestingly, the only case schema to which no generalization is provided is (C) which is the one whose apodosis is given by the two dissenting opinions of R. Meir and R. Jose. In this case again it is fairly easy to see in the ‘general rule’ an explanatory function in that it spells clearly out the principle behind the case schemata.

As to the form, in (2) the formula **זֶה הַכֹּלֵל** is followed by apodictic statements whose generalizing function is much more evident than in cases where the formula is followed by other case schemata as in (1), (3), and in the example (4) below.

(4) Ned. 11:9

(A) [It is written] But the vow of a widow or of her that is divorced... shall stand against her (Num. 30,9).

(B) Thus if she said, ‘I will be a Nazirite after thirty days’, although she married again within the thirty days, he cannot revoke it.

(C) If she made a vow while she was in the control of her husband, he may revoke it.

(D) Thus if she said, ‘I will be a Nazirite after thirty days’, although she became a widow or was divorced within the thirty days, the vow remains revoked.

(E) If she made a vow on one day and was divorced on the same day, and he took her back the same day, he may not revoke the vow.

195 On conditional clauses expressed in the form **... בִּי... בִּי** see, M. Azar, "The Conditional Clause in Mishnaic Hebrew," in *Studies in Mishnaic Hebrew*, ed. M. Bar-Asher (Jerusalem: The Magnes Press, The Hebrew University, 1998), p. 65.

196 Danby, *The Mishnah*, p. 274.

197 Cf. Neusner, *Il Giudaismo nella Testimonianza della Mishnah*, p. 570.

198 **וְכֹל שֶׁאֵין זְמַנוּ** and **כֹּל שֶׁזְמַנוּ**.

199 **אֵין אֶסֶר אֶלֶּא עַד שִׁגִיעַ** and **אֶסֶר עַד שִׁגִיעַ**. The use of the expressions (**עַד שִׁגִיעַ**) and (**אֵין אֶלֶּא**) sentence features a typical Mishnaic way of expressing contrasts and oppositions. Cf. Alex Samely, "Stressing Scripture's Words: Semantic Contrast as a Midrashic Technique in the Mishnah," *Journal of Jewish Studies* 46 (1995): p. 222., Samely, *Rabbinic Interpretation*, p. 293; Segal, *A Grammar of Mishnaic Hebrew*, pp. 238-39.

200 **עַד שִׁדְּוֹ אֶסֶר עַד שִׁצָּא**.

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(F) **This is the general rule** (זֶה הַכֹּלֵל): if she had even for an hour entered into a state of independence he cannot revoke or vow.²⁰¹

In Neusner's thematic index of *Nedarim*, 11:9-10 are placed within a section dealing with general revocation of vows; and within a sub-section dealing with vows of a woman, not subjected to abrogation. The pericope opens with a scriptural quotation (A) stating the principle according to which all that a widow or a divorced woman has vowed remain valid for her. The Mishnah asks for an explanation (כִּי־צַד)²⁰² about how the principle works.²⁰³ I would say that the answer to the כִּי־צַד is already given in (B)-(E) although the validity of the answer is very limited because of the great specificity of the case listed in the series. Nonetheless, as Samely points out, the reader would be able to understand the principle behind the series of case schemata also in the absence of the general rule 'simply by considering them in their interdependence'.²⁰⁴

It might be asked why the general rule is expressed casuistically but also, what function does the formula זֶה הַכֹּלֵל perform in this case; it seems as though the generalizing power of the formula is impinged on the casuistic form of the sentences that substantiate it. However, in this example like in (1) and (3), the explanatory function of the formula זֶה הַכֹּלֵל emerges quite clearly despite the meaningful formal differences existing between the sentences which follow the formula.

In the next pages I shall consider other types of reasons namely, reasons expressed by subordinate clauses. The attention will be placed again on the anaphoric and cataphoric relations that the reason has with its co-text in order to see how wide the validity of the reason spreads within its co-text, but also, I will select my examples on the basis of the functional transformations that reason-clauses may perform. In other words, there are 'reasons' which can be also seen as either protases or apodoses of a case schema; in these cases the 'reason', though still performing an explanatory function, takes also in different functions i.e., as halakhic evaluation (apodosis) or situational parameter (protasis). Conversely, other reason-clauses can be considered 'pure reasons', these are normally appended to the apodosis of a case schema and their function is purely explanatory although some distinction as to the type of justification provided can be made within this category.

In example (5) the reason-clause performs the function of justifying the apodosis by explaining or clarifying the protasis.

(5) Ket. 1:5

(A) If in Judea²⁰⁵ a man ate in the house of his father-in-law and had no witnesses he may not lodge a virginity suit against her,

(B) **since** (כִּי־פָנִי) he had [already] remained alone with her.²⁰⁶

This pericope, in Neusner's thematic classification, belongs to a section dealing with the formation of marriage and the material rights of the parties involved in the contract (1:1-5:1); the pericopae from 1:1 to 2:10 deal in general terms with the wife while, from 1:5 to 2:3 the Mishnah spells out rules

201 Danby, *The Mishnah*, pp. 279-80.

202 In Danby's translation this question is not presented. For another translation of the same passage see for instance Samely, 'From Case to Case', p. 265.

203 David Daube observes that the interrogative adverb כִּי־צַד 'it is frequently to be met with as introducing the illustrations of a general principle'. Found in David Daube, "Principles and Cases," in *New Testament Judaism. Collected Works of David Daube. Volume Two*, ed. Calum M. Carmichael (Berkeley: The Robbins Collection, 2000), p. 175.

204 Samely further remarks that 'it is probably fair to say that the cumulative effect of pairs and series of case schemata in the Mishnah is to encourage the reader to look always beyond the actual case to the principle behind it'. 'From Case to Case', p. 265.

205 It might be worth noticing that Judea is an exception here; Judean men are somewhere else in the Mishnah mentioned as unreliable/impetuous.

206 Danby, *The Mishnah*, p. 245.

concerning the virgin.²⁰⁷

Our pericope is formed by a case schema (A) and by the reason (B) motivating the protasis-apodosis norm; clearly the reason in (B) just refers to (A) with no connection either with what comes first or after.²⁰⁸

What kind of function does the reason perform here? First it should be asked what motivates the apodosis i.e. that ‘he may not lodge a virginity suit against her’; apparently it is the fact of ‘remaining alone with her’ as stated in (B) but, the protasis does not tell us that he actually remained alone with her in that the fact of being in the house without witnesses does not necessarily entail that he remained alone with her. Thus, ‘what the law seems to be saying is that if a man resides in the house of his father in law, where his prospective bride also lives, and is not accompanied by witnesses the whole time, he may not lodge a virginity suit against her, since without such witnesses there is a presumption of being alone with her, which would undermine such a suit’.²⁰⁹

Hence, it seems as though the reason here has the function of spelling out the legal underlying principle which motivates the apodosis, i.e. that in order to undermine the virginity suit it is not necessary that he actually remained alone with her, but rather that the simple presumption is itself sufficient to undermine it. Thus the reason provides primarily a ‘legal explanation’ but on the other hand, also has the function of justifying the halakhic decision by explaining the protasis and in this sense might be defined as a ‘factual explanation’ or, as proposed by Samely, it can also be defined as a ‘paraphrase of the protasis’ reason. This latter definition would make it easier to see the relationship with the next category of cases where, as we shall see, the reasons provided are also a sort of ‘paraphrase of the protasis’. However, whereas in (5) the reason provides what I have called a ‘factual explanation’ of the protasis, in (6) to (8) the reason-clauses provide linguistic explanations of a situational parameter in the protasis. More precisely, it might be observed that in (6), (7), and in (8A), the argument is based taking into account the semic core²¹⁰ of the expressions considered, whereas, in (8B), the fact of not considering ‘women and children’ as belonging to the category of ‘the black-haired’, seems to be based on the notion of contextual semes i.e. the meaning of the term which derives from the context; in this case, from the particular language community.²¹¹

(6) Ned. 3:6

If a man vowed to have no benefit ‘from any sea-farers’, he is permitted to have benefit from land-dwellers; but if ‘from any land-dwellers’, he is forbidden to have benefit from sea-farers, **since** (ז) ‘sea-farers’ are included in the term ‘land-dwellers’.

(7) Ned. 3:7

If a man vowed to have no benefit from ‘them that see the sun’, he is forbidden to have benefit from blind folk, **since** (ז) the words mean only ‘any that the sun sees’.

207 Cf. Neusner, *Il Giudaismo nella Testimonianza della Mishnah*, p. 568.

208 As remarked by Samely (in personal correspondence), ‘Judea is in fact an exception here; Judean men are somewhere else in the Mishnah mentioned as unreliable/impetuous’.

209 Jackson in personal correspondence.

210 I use this terms as defined by Jackson as the ‘literal meaning’ which is itself defined as the combination of the different values of a word. As Jackson writes, ‘this combination, it is sometimes said, the “semic core” of the word, and the semic core will normally be the literal meaning’. In Bernard S. Jackson, *Making Sense in Law. Linguistic, Psychological and Semiotic Perspectives* (Liverpool: Deborah Charles Publications, 1995), p. 42. Incidentally, it should be mentioned that also the notion of ‘literal meaning’ is in itself problematic in that, being the meaning of language not inherent in language itself but rather, the product of conventions shared by the same semiotic group, literal meaning is therefore not universal to all speaker of the same natural language and thus is itself in a way ‘contextual’. See *ibid.* § 1.8.

211 As Jackson points out, ‘in some cases, the contextual semes merely add to the meaning of the term, without disturbing the semic core’ but, in other cases, ‘the contextual semes will go further, apparently overriding part of the semic core’. In *ibid.* p. 42.

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(8) Ned. 3:8

(A) If a man vowed to have no benefit from ‘the black-haired’, he is forbidden to have benefit from the bald and the grey-haired,

(B) but not from women and children, **since** (ש) only men are called ‘the black-haired’.²¹²

The three examples above are constructed on a very similar pattern: the protases present the case of someone that vowed to abstain from any benefit coming from a certain category of people, while the apodoses ‘confirm’ the validity of the vow but they also clarify the usage meaning of the word.²¹³ The Mishnah, being interested in the meaning of the legally binding utterances, attempts here to clear any doubt as to what is defined by the object of the vow. Thus, the reasons provide helpful guidance for the precise understanding of what the objects included under a term are; in this sense, they justify the apodoses by providing a ‘linguistic explanation’ (based on core or contextual semes) of the protases. In all these cases, and as we shall see in the examples below, reasons serve as specifications of the protasis more than as generalizations of the apodoses.

Interestingly, in Ned. 3:9 and 3:11 we find the same kind of linguistic explanation though expressed in a different formal pattern, i.e. without reason-clause (9), and with a reason-clause supported by a scriptural quotation (10).

(9) Ned. 3:9

(A) If a man vowed to have no benefit from ‘creatures that are born’ (*yillodim*), he is not forbidden to have benefit from ‘creatures that maybe born’ (*noladim*);

(B) but if [he vowed to have no benefit] from ‘creatures that maybe born’ (*noladim*), he is forbidden [to have benefit] from ‘creatures that are born’ (*yillodim*).

(C) R. Meir says that he is not forbidden [to have benefit] from ‘creatures that are born’ (*yillodim*);

(D) and the Sages say: This word (*yillodim*) means only creatures that bring forth [living young].²¹⁴

The case is similar to that of the examples above in that the apodosis depends on the interpretation of the ‘contextual meaning’ of the object of the vow in the protasis, and the utterance of the Sages in (D) acts as a reason providing a linguistic justification of the apodosis. The same function that was performed by reason-clauses in (6-8) is performed in example (9) by the declaration of the Sages.

Finally, in 3:11 the very same linguistic explanation of the category enunciated in the protasis is still provided by means of a reason-clause (B) but this one, is further explained by a scriptural quotation (C).

(10) Ned. 3:11

(A) [If he said] ‘*Konam!* If I have any benefit from the circumcised!’ he is forbidden to have benefit [even] from the uncircumcised in Israel but he is permitted to have benefit from the circumcised among the nations of the world,

(B) **since** (ש) ‘uncircumcised’ is but used as a name for the gentiles,

(C) as **it is written** (כתיב), For all the [others] nations are uncircumcised, and all the house of Israel are uncircumcised in heart.²¹⁵

In (10) the first reason-clause introduced by ש and appended to the apodosis is further explained by the

212 Danby, *The Mishnah*, p. 267.

213 These examples clearly show that ‘ordinary language’ is what the Rabbis are after, not abstract or logical or philosophical semantics.

214 Danby, *The Mishnah*, p. 267.

215 Ibid. p. 268.

scriptural quotation of Jer. 9:26. In this case there is a double warrant for the apodosis, the first explanation is integrated in the verse of Jeremiah which provides a usage example for the meaning of 'uncircumcised'.

It is interesting to point out the fact that the Mishnah may use not only different formal expressions as warrant for the same type of justification, but also different categories of reasons to explain the semantics of an expression on which the apodosis depends. Examples (6) to (10) are all constructed on a very similar pattern in that in all of them a 'linguistic contrast operation' takes place.²¹⁶

The next example (11) has been chosen because it allows me to make some observations about the complex co-textual and contextual relations which point to some of the organising principles of the text (or the lack of them). The passage is Baba Kamma 3:5 but before analysing it directly, a thematic introduction is required.

Baba Kamma, Daube points out,²¹⁷ can be divided thematically in two main sections: the first one (1–7) deals with 'damage to property and theft' on the basis of the Mishpatim in Ex. 21:28 ff., whereas the second (8–10) deals 'with injury inflicted on a person' (Ex. 21:18 ff.).²¹⁸ Neusner also divides the tractate in two main sections but, unlike Daube he places chapter 7 (which deals with theft) in the second section on damages caused by individuals.²¹⁹

The Mishnah in 1:1 spells out the four main causes of injury²²⁰ but, surprisingly in 2:6, what might seem as a fifth cause of injury, is introduced thus seemingly anticipating the theme of damages caused by individuals which is dealt with in the second part of the tractate:

(A) Human kind is always an attested danger (אדם מועד לעולם), whether [the damage is caused] by error or wantonly, whether awake or asleep.

(B) If a man blinded his fellow's eye or broke utensils, he must pay full damage.²²¹

As pointed out by Jackson, 'the introduction of damage committed by a human being into the basic schema of the beginning of B. K. is indeed an issue that has prompted discussion, particularly from Daube'.²²² However, 2:6 has to be read in the light of B. K. 1:4 where 'man' is included in the category of attested dangers (מועדין)²²³; thus, it has not to be considered as a fifth independent category but rather, as an example of the sub-category *mu'ad*²²⁴ which is one of the two forms of *shor*.²²⁵

This thematic introduction was necessary to show the complexity of the thematic organization and the fact that despite the scarcity of general principles and the usual paratactic structure, sometimes other organizing principles can be detected within certain passages. Let us now analyse the pericope where the reason-clause appears.

216 Cf. Samely, 'Stressing Scripture's Words', and Samely, *Rabbinic Interpretation*.

217 Daube, 'The Civil Law of the Mishnah, pp. 275-76.

218 'The Mishnah re-groups the Biblical material with a view to creating a more logical system.' In *ibid.* p. 276.

219 Cf. Neusner, *Il Giudaismo nella Testimonianza della Mishnah*, pp. 572-73.

220 These are: the ox, the pit, the crop-destroying beast, and the outbreak of fire.

221 Danby, *The Mishnah*, p. 334.

222 Jackson in personal correspondence.

223 This fact is pointed out by Jackson when he writes that 'the enumeration of *mu'adim* in Mishnah 1:4 includes *mav'eh*, whether understood as *shen* or *adam*'. In Jackson, 'Maimonides' Definitions of *Tam* and *Mu'ad*,' p. 170.

224 In Maimonides' definition, the category of *mu'ad* is explained as follows: 'The one which did an act which it is its way to do always, in accordance with the customs of its species, - that is the one (traditionally) called *mu'ad*.' In *ibid.* p. 168. The definition provided here is interesting also in relation to the concept of *derekh* treated above. *Supra* p. 32.

225 The other being *tam* which Maimonides defines as follows: 'the one which changes and does an act which it is not the way of all its kind so to do always, for example the ox which gores or bites, - that is the one traditionally called *tam*.' In *ibid.* p. 168.

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(11) B. K. 3:5

- (A) If one came carrying his jar and another came carrying his beam, and the jar of the one was broken by the beam of the other,
- (B) the latter is not culpable **since** (ש) each alike has the right²²⁶ of passage.
- (C) If the man with the beam came first and the man with the jar came after, and the jar broke against the beam, the man with the beam is not culpable.
- (D) If the man with the beam had [suddenly] stopped he is culpable, but if he had said, 'Stop!' to the man with the jar, he is not culpable.
- (E) If the man with the jar came first and the man with the beam came after, and the jar broke against the beam, the man behind is culpable.
- (F) If the man with the jar had [suddenly] stopped, the other is not culpable, but if the first had said, 'Stop!' to the man with the beam, he is culpable.
- (G) So, too, if one man came with his light and the other came with his flax.²²⁷

Example (11), formed by six case schemata, is organised according to the principle of the 'minimal critical difference'²²⁸ in that the apodoses vary with the changing of one of the situational parameters in the protases. The situational parameters here are, the order of the two men, the sudden interruption of the walk, and the declaration of the intention to stop, which can be considered as a 'sub-situational parameter' in that it provides a further clarification within the same protasis.²²⁹ The reason-clause is appended to the first apodosis of the series (B); its range of validity is apparently very limited in that it extends only to the case schema to which it belongs.

The reason provided in (11) is clearly of a different type than those in the previous examples; it does not give an 'internal' explanation of either the protasis or the apodosis but rather, it justifies the apodosis on the basis of an 'external' (legal) principle i.e. that 'each alike has the right of passage'. This is a general principle whose validity is much broader than that of the case to which it refers; reasons of this kind, i.e. with no direct thematic relation with their co-text, seems to me quite unusual in the tractates surveyed.

Finally and very succinctly, I would like to provide an example of a type of case which is likely to attract a Mishnaic explanation. These are cases in which the risk exists that a 'normally' correct behaviour might not be sufficient to prevent the violation of a commandment and therefore more stringency is required. Examples of this kind are several case schemata in tractate Demai where a particularly stringent apodosis is given. In these cases, the reason justifies the apodosis by pointing out the risk of violation which the actual situation entails.

(12) Dem. 3:5

- (A) If a man gave [food to be cooked] to the mistress of the inn
- (B) he must tithe what he gives her and also what he receives back from her,
- (C) **since** (ש) (בפני) she must be suspected of changing it.
- (D) R. Jose said: We are not answerable for deceivers: he needs tithe only what he receives back from

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227 Danby, *The Mishnah*, p. 334-35.

228 See Samely, 'Delaying the Progress from Case to Case', p. 102.

229 Of course, with a slight adjustment of perspective it is possible to consider 'stopping' as a sub-situational parameter of 'walking'; from this standpoint thus there is just one situational parameter.

her.²³⁰

As we can see, here, the ‘normal’ apodosis would be that of R. Jose but, the suspicion that she might change it, leads the Rabbis to state the more stringent apodosis (B) which is justified by the reason-clause in (C).

2. Discourse Functions

In this section I shall give a brief summary of the preceding section, attempting to synthesize the outcomes of the analysis of the above examples. These have been selected on the basis of the three main criteria stated above that is, the relation of the reason with its co-text and context, how wide the validity of the reason spreads, and what kind of function does the reason perform.

A first main distinction has been drawn between reasons introduced by one of the generalizing formula such as *זה הכלל*,²³¹ and the others types of reasons, such as reason-clauses, scriptural quotations, and reasons not introduced by any special terminology as in Ned. 3:9.

I shall first point out the main differences resulting from this distinction, and secondly, analyse functional differences within each of the two categories.

Example (1), containing both reason-clauses and a general rule is particularly meaningful in that it allows us to account for the different extension of the validity of the two types of reasons. In very general terms it can be said that the generalizing power of the *זה הכלל* is usually wider than that of the other types of reasons. In example (1) above the reason-clause in (C) and (F) applies only to the single case schema to whom apodosis is appended while the general rule in (G) applies to the two preceding case schemata of the pericope. The trend identified here can be considered as having broad validity in that, general rules normally apply anaphorically to the preceding case schemata,²³² while the other types of reasons usually refer just to the single case schema to which they are appended. This is of course a very general distinction and various exceptions can be found. Nonetheless, it is useful to make it, precisely because reason-clauses whose validity extend to other case schemata are, indeed, exceptions.²³³ With this I do not intend to argue that ‘simple’ reason-clauses lack any generalizing power as, the above observations apply mainly to co-textual relations but not to contextual relations. What I mean is that although the validity of the reason does not spread to its co-text, nonetheless there are instances where the effect of the reason provided extends outside the cases placed in textual proximity, applying either to cases not explicitly mentioned in the text or to cases reported in other Mishnaic passages. I shall clarify what I mean with the help of an example taken from tractate Baba Kamma.

(13) B. K. 3:10

(A) A man may be culpable by an act of his ox but not culpable by a like act of his own, and he may not be culpable by an act of his ox but culpable by a like act of his own.

(B) If his ox inflicted indignity he is not culpable, but if he himself inflicted indignity he is culpable.

(C) If his ox blinded the eye of his bondman or knocked out his tooth, the owner is not culpable; but if he himself blinded the eye of his bondman or knocked out his tooth, he is culpable.

(D) If his ox hurt his father or his mother, he is culpable; but if he himself hurt his father or his mother, he is not culpable.

230 Danby, *The Mishnah*, p. 23.

231 See the preceding section for a survey of different terms introducing rabbinic generalizations. Cf. Moscovitz, *Talmudic Reasoning*, pp. 52 ff.

232 Exceptions are of course those which appears at the beginning of a pericope introduced by the formula *כלל אמרו* as in Yeb. 2:3 which apply cataphorically, and the few cases like B. K. 9:1 where the general rule might possibly apply to the case schemata in the pericope that follows.

233 See for instance B. K. 3:10 analysed below.

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(E) If his ox set fire to a stack of corn on the Sabbath he is culpable, but if he himself set fire to a stack of corn on the Sabbath he is not culpable [for burning the stack] **since** (שׁ) he is become liable with his life [for profaning the Sabbath].

This pericope is particularly significant for two reasons: first because it constitutes an exception to our statement above that usually reason-clauses have a very limited co-textual validity. In fact, the reason provided in (E) is liable to apply not only to the apodosis to which it is appended, but also to the apodosis of the case schemata in (D). Second, because the principle that if ‘he becomes liable with his life’ he has to be punished accordingly and not for minor infractions, might easily apply to other similar cases.²³⁴

Another and different case is example (14) below, taken from tractate Nedarim.

(14) Ned. 2:2

Thus if he said, ‘*Konam* be the *Sukkah* I build!’ [or] ‘the *Lulab* I carry’ [or] ‘the phylacteries I put on!’ with vows this is binding, but with oaths it is not binding, **since** (שׁ) none may swear on oath to transgress religious duties.²³⁵

The example mentions just two cases of oaths transgressing religious duties but the reason provided explicitly extends the validity of the case schema to all oaths and swears transgressing religious duties.²³⁶ Similar cases of reasons which refer to a single or more than one term belonging to the same paradigm, but that can be taken as applying to the whole category, are not uncommon in the Mishnah.²³⁷

So far we have seen that all reasons, be they expressed as general rules or otherwise, may perform both explanatory and generalizing functions despite their very limited co-textual validity. Now I shall consider more closely the examples of general rules quoted above, attempting to point out the different types of function they may perform.

In the four selected examples concerning ‘general rules’ we have seen that they usually come at the end of pericopae,²³⁸ although there are of course exceptions. General rules can be placed either in the middle of a pericope²³⁹ or can be placed at the beginning as for instance in Yeb. 2:3.²⁴⁰ As noted by Moscovitz, these are more stylistic than conceptual differences,²⁴¹ and for the purposes of the present sub-section, i.e. discourse analysis, these are not helpful distinctions; what is important to point out here is the fact that functional differences do not necessarily stem from formal dissimilarity.

In the four examples analysed we have seen that what comes after the formula **כָּלֵל אָמַר** may be followed either by casuistic (1), (3), and (4) or by apodictic statements (2), and it might be a repetition either of preceding reason-clauses as in (1), or a repetition of the apodoses as in (2), or a paraphrase or explanation of the protases as in (3), and (4). All these cases have prescriptive value but they differ as to their explanatory and generalizing power. The general rule in B. K. 9:1 in (2), being a repetition of the apodoses, clearly does not perform any explicative function but rather just a generalizing one, in this case in fact, the general rule offers no guidance for detecting the principle behind the case schema (which, however, is easily detectable).

²³⁴ The same, I suppose, can be said to the reason-clause in B. K. 3:5 in example (11) above, which might apply to other contextual cases. However, I have no evidence for this and these are thus only mere suppositions.

²³⁵ Danby, *The Mishnah*, p. 265.

²³⁶ From both the analysis of the cases featuring general rules and cases featuring other types of reasons a close relation existing between ‘explanation’ and ‘generalization’ can be deduced.

²³⁷ See for instance Bekh. 1.2 where the protases mention only ‘one type of animal (*behemah*, domesticated animals), whereas the explanation implicitly extends this ruling to all types of animals [...]’. Moscovitz, *Talmudic Reasoning*, p. 205.

²³⁸ The same pattern applies also to the majority of the ten cases I have found in the material scrutinized but not analysed in the section above.

²³⁹ For instance B. K. 8:6.

²⁴⁰ As already mentioned, when the general rule appears at the beginning, it is introduced by the formula **כָּלֵל אָמַר**

²⁴¹ Cf. Moscovitz, *Talmudic Reasoning*, p. 53.

All other examples present casuistic sentences after the formula *זה הכלל* but, it should be mentioned that in example (3), both halves of the general rule feature the generalizing particle *כל* which confers a higher degree of generalization than in examples (1) and (4), where the casuistic form of the sentences which follow the general rule impinges on its generalizing value. Nonetheless, in these three cases, the relation between the general rule and the case schema to which it is appended emerges quite clearly.

I shall now turn to those examples in which the reason is introduced either by means of a reason-clause or a scriptural quotation, with a view to analysing the different types of function performed, and the different kinds of reason provided.

In the examples selected we have seen cases where the reason is either an explanation or a paraphrase of the protasis as in (5) to (9), or is functionally equivalent to an apodosis²⁴² (10), or functions as a ‘pure reason’ (11) and (12).

Let us consider first the group of examples where the reason has the function of clarifying the protasis. In Ket. 1:5 the reason-clause is a paraphrase of the protasis; the apodosis is justified by providing both a legal and a factual explanation of the protasis. The reason actually works like this: if X is the case, then Y needs to be done, because X is the case; the situational parameter ‘and had no witnesses’ seems to be considered as decisive and comes back as a reason introducing the presumption that ‘he had [already] remained alone with her’ which justifies the apodosis.

As to examples (6) to (10), there also the reasons are somehow paraphrases of the protases but of a different sort in that they do not provide factual but linguistic explanations.

Formally, three different patterns are detectable: reasons introduced by reason-clauses as in (6), (7), and (8); reasons not introduced by any particular terminology (9); and a twofold reason given through a reason-clause and a scriptural quotation in (10). Again, notwithstanding similar formal patterns, a functional distinction has to be drawn between examples (6) to (9), which are explanations of the protases, and example (10) where the reason is functionally equivalent to an apodosis.

All cases deal with vows and they all present the linguistic problem of determining the exact ‘extension’ of the object of the vow; as mentioned above, this does not take place on the level of abstract, logical or philosophical semantics but rather, on the level of ‘ordinary’ (usage) meaning. The actual question is in fact ‘what are the objects included under a term rather than ‘what is its (semantic) meaning?’. The problem is dealt with by means of a ‘contrast operation’²⁴³ that is, through a technique meant to define the ‘meaning’ of an expression by putting it in contrast with similar terms belonging to the same paradigm. As Samely points out this method is normally applied in the interpretation of scriptural passages,²⁴⁴ but may also be used to interpret ‘ordinary’ language expressions.²⁴⁵ These ‘are typically concerned’, as in our examples, ‘[...] with the wording of vows [...]’.²⁴⁶ Thus, in the cases under consideration, the base terms in the protases, for instance ‘the black-haired’ in (8), are defined by contrast with or by excluding similar expressions (contrast terms) from the same paradigm.²⁴⁷

To conclude I would like briefly to sum up the more relevant facts which emerged from my analysis of the scrutinized material. First, I would point out the fact that there is no relation between the formal pattern and the function performed by the reason. More meaningful is the observation of the formal and substantial relationship established by the ‘reason’ with the two components of the case schema, protasis and apodosis. The analysis of this may provide very useful information as to the kind of

242 For an in depth study of similar cases, cf. Samely, *Rabbinic Interpretation*, pp. 101 ff.

243 I borrow the term ‘operation’ from A. Goldberg who applies it for the analysis of midrashic units, and particularly from the use of it made by A. Samely in ‘Stressing Scripture’s Words’, p. 196 n. 2.

244 Ibid. pp. 196-229.

245 ‘There are some contrast cases in the Mishnah which do not relate to biblical texts but to ordinary language.’ Ibid. p. 218.

246 Ibid. p. 218.

247 Samely uses the expression ‘base term’ referring to the biblical expression, and ‘contrast term’ for the Mishnaic one. In this setting I use ‘base term’ for the expression which has to be defined, and ‘contrast term’ for the expressions, whose exclusion serves to define the ‘base expression’. Cf. *Rabbinic Interpretation*, p. 282.

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function which the reason performs, although not as to the type (factual, linguistic or legal among others) of reason carried. Then, I would recall the interesting and close relationship pertaining between explanation and generalization. Finally, I would like to mention the fact that normally Mishnaic reasons are very realia-related, i.e. they do not explicitly deal with abstract or metaphysical concepts.

CONCLUSION

It is now time to attempt a synthesis of the of the analysis of the sources made above, and to lay out a few observations of a more general character on the activity of 'giving reasons' in Mishnaic discourse. But before this, I shall briefly sum up the more salient points touched upon in my investigation.

First I tried to define the concept of 'reason' as I use it, by making reference to both modern legal and philosophical contributions on this topic, and to more specific attempts which have been made to describe the characteristics of *Tannaitic* explanatory activity. The result has been a wide portrayal of various features of the term 'reason'. This allowed me to give an account of the complexity inherent in this term when aimed to be used as analytic tool but also and more significantly, leaving it as a sort of 'open concept' allowed me better to depict the multi-faceted activity of the Mishnaic giving of reason by comparing and contrasting the sources case by case.

The complexity of the attempt to set out the concept of 'reason' is somehow reflected by the difficulties involved in the attempt of establishing formal criteria for their classification according to the grammatical, syntactical, and argumentative ways in which they are expressed. Nevertheless a first main general distinction could be established in relation to the type of argument supporting the norm thus setting the categories of 'dependent' and 'independent' reasons. Then, I set up a very general syntactic distinction between reasons expressed as subordinate sentences and reasons expressed as independent sentences; and finally, I considered the features of individual Hebrew expressions used to introduce reasons. However, since there is no one-to-one relation between formal and conceptual traits, and because cross-criteria of classification could be applied, I presented the reasons encountered according to their formal elements, and I spelled out exceptions and mixtures case by case.

This formal analysis although useful is nonetheless limited as to its hermeneutic possibilities. I therefore then examined the sources from the point of view of discourse analysis, trying to point out the type of function performed by reasons in Mishnaic discourse with particular attention to, first their relation to the two components of the case schema to which they are invariably appended, and second, to their wider co-text and context. I have noted that there is no strict relation between literary pattern and type of function performed by the reason; more interestingly, I noticed that there is no strict correspondence between the argument used to support the reason and the kind of reason provided. We have in fact seen that what I have called 'argument' in support of an apodosis, namely sources of law, may provide various types of explanations; for instance linguistic, legal, or factual.

I believe that in dealing with 'reasons' in Mishnaic discourse, it might be useful to pay attention to the following questions: 1. how is the reason formally expressed? 2. Does the reason increase or limit the range of application of the protasis (or of the apodosis)? 3. What is the type of argument used in support of the reason? 4. What kind of explanation does the reason, seen in the context of its argument provide? 5. What type of norm is explained by the reason? 6. Is the reason provided a 'final reason' or does it call, in the way in which it is formulated, for further interpretation or expansion?

In a way it is only after an examination of the material as provided here that these questions can be formulated with any confidence, and I am aware that not all those questions have been clearly unfolded: question 2) ought to have been further investigated because it is liable to give valuable insights into the activity of the giving of reasons in Mishnaic discourse and would also be helpful for a comparative study of ancient legal systems. Limits of space but especially of *halakhic* competence have greatly impinged on a more significant treatment of this specific topic. Question 6) also has been dealt with only tangentially and it stands as an open question which would deserve to be further investigated. Nevertheless, I believe the present work may constitute a useful starting point for its unfolding.

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APPENDIX

ZERAIM

Demai

- 2:2 R. Judah says: Even he that is the guest of an *Am-haaretz* may still be reckoned trustworthy. They replied: He would not be trustworthy in what concerns himself; how then (כִּי־צַדִּיק) could he be trustworthy in what concerns others?
- 3:2 If he bought vegetables in the market and then determined to give them back, he may not give them back until he has given tithe, **since** (ש) naught was lacking save the numbering. If he was about to buy them but saw a better load, he may retract [and need not give tithe], **since** (שׁ בַּפְּנֵי) he had not drawn [them into his possession].
- 3:5 If a man gave [food to be cooked] to the mistress of the inn he must tithe what he gives her and also what he receives back from her, **since** (שׁ בַּפְּנֵי) she must be suspected of changing it.
- 3:6 If a man gave [food to be cooked] to his mother-in-law he must tithe what he gives her and also what he receives back from her, **since** (שׁ בַּפְּנֵי) she must be suspected of changing what is spoilt.
- 5:3 If a man bought from the baker he may give Tithe from what is freshly baked instead of from stale bread, or from stale bread instead of from what is freshly baked, even though they are of many [diverse] moulds. So R. Meir. R. Judah forbids it **since** (ש) one may suppose that wheat of yesterday came from one man [and was untithed] while that of today came from another [and was tithed].
- 6:11 If a man sold produce in Syria and said, 'It is from the Land of Israel', Tithes must be paid from it. [If he said,] 'It is already tithed', he may be believed, **since** (ש) the mouth that forbids is the mouth that permits. [If he said,] 'It is my own [growing]', it must be tithed; [but if he said,] 'It is already tithed', he may be believed, **since** (ש) the mouth that forbids is the mouth that permits; and if it was known that he had another field in Syria, the produce must be tithed.
- 7:3 If a labourer does not deem the householder trustworthy he may take one dried fig and say, 'Let this and the nine which follow after it be Tithe for the ninety that I shall eat; let this one be Heave-offering of Tithe for all of them; and let the Second Tithe be in the last fig and rendered free for common use by [the setting aside of its redemption] money'; and he should reserve one dried fig. Rabban Simeon b. Gamaliel says: He should not reserve it, **for** (שׁ בַּפְּנֵי) he thus lessens the work that he does for the householder. R. Jose says: He should not reserve it, **because** (שׁ בַּפְּנֵי) this is a condition enjoined by the Court.
- 7:7 If a hundred parts of untithed produce [were mixed with] ninety parts of Tithe, or ninety parts of untithed produce with eighty parts of Tithe, naught is lost. **This is the general rule** (זֶה הַכֹּלֵל): when the greater part is untithed produce naught is lost.

NASHIM

Yebamoth

- 1:3 To six [other] women within the forbidden degrees greater stringency applies than to these, **since** (שׁ בַּפְּנֵי) they may only be married to others; and their co-wives are permitted [in marriage to the deceased husband's brother]: namely, his mother, his father's wife, his father's sister, his sister by the same father, his father's brother's wife, and the wife of his brother by the same father.

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- 2:1 If there were two [married] brothers, and the first one died [childless] and a [third] brother was then born; and afterwards the second brother took in levirate marriage his deceased brother's wife and then himself died; the wife of the first brother is exempt [from levirate marriage with the third brother] **in that** (בגלל) she was 'the wife of his brother who did not live at the same time as he', and the wife of the second brother [is exempt from levirate marriage with the third brother] **in that** (בגלל) she was her co-wife.
- 2:2 If there were two [married] brothers, and the first one died [childless] and the second took in levirate marriage his deceased brother's wife; and afterward a [third] brother was born and then the second brother died; the wife of the first brother is exempt [from levirate marriage with the third brother] **in that** (בגלל) she was 'the wife of his brother who did not live at the same time as he', and the wife of the second brother is exempt **in that** (בגלל) she was her co-wife.
- 2:3 A **general rule** (כלל אמרו) they have laid down about a childless brother's widow: if she is exempt by virtue of the forbidden degrees, she needs neither perform *halitzah* nor contract levirate marriage; if she is exempt by virtue of an ordinance [of the Scribes] or by virtue of the holiness [of the levier] she must perform *halitzah* and may not contract levirate marriage; if her sister is also her sister-in-law she may either perform *halitzah* or contract levirate marriage.
- 2:10 If a Sage pronounced a woman forbidden to her husband because of her vow, the Sage may not marry her. If in her presence she exercised right of Refusal or performed *halitzah*, he may marry her, **since** (כי) he was [but a member of] the court.
- 3:6 If there were three brothers, two married to two sisters and the other to a woman not near of kin, and the husband of one of the sisters died and the brother married to the woman not near of kin married the widow and then died, the widow is free [from levirate marriage with the surviving brother] **in that** (בגלל) she is the sister of his wife, and the woman not near of kin is free **in that** (בגלל) she was her co-wife.
- If there were three brothers, two married to two sisters and the other to a woman not near of kin, and the brother married to the woman not near of kin died, and the husband of one of the sisters married the widow and then died, the first woman is free [from levirate marriage with the surviving brother] **in that** (בגלל) she is the sister of his wife, and the other woman **in that** (בגלל) she was her co-wife.
- 3:7 If there were three brothers, two married to two sisters and the other to a woman not near of kin, and the husband of one of the sisters died and the husband of the woman not near of kin married the widow and then the wife of the other husband died, and afterward the husband of the woman not near of kin died also, then she is forbidden to him for all time, **since** (כי) she was forbidden to him during a certain time.
- 3:9 If three brothers were married to three women not near of kin and one of the brothers died and the second brother only bespoke the widow for himself and then died, the [two] widows must perform *halitzah* and may not contract levirate marriage [with the third brother], **for it is written** (כאשר), [*If brethren dwell together and one of them die...her husband's brother shall go in unto her* (Deut. 25:5) – thus she is bound only to one brother-in-law and is not bound to two brothers-in-law.
- If two brothers were married to two sisters and one of the brothers died and afterward the wife of the other brother died, [the wife of the first brother] if forbidden to him for all time, **since** (כי) she was forbidden to him during a certain time.
- 3:10 If two men had betrothed two women and when they entered into the bride-chamber the two women were exchanged, then both are culpable **by virtue** (בגלל) of the law of thy neighbour's wife (Lev. 18:20); and if they were brothers, **by virtue** (בגלל) of the law of thy brother's wife; and if they were sisters (Lev. 18:16), **by virtue** (בגלל) of the law of a woman and her sister (Lev. 18:18); and, if they were both menstruants, **by virtue** (בגלל) of the law of the menstruant (Lev. 18:19).

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- 4:10 R. Judah says: They that had been married may forthwith be betrothed, and they that had been [only] betrothed may forthwith be married, excepting betrothed women in Judea, **since** (בפניו) [there] the bride-groom is less shamefast before her. R. Jose says: All women may be betrothed [again forthwith] excepting the widow, **because** (בפניו) of her [prescribed] time of mourning.
- 6:4 If he had betrothed a widow and was afterward appointed High Priest, he may consummate the union. It **once happened** (ובמעשהו) that Joshua b. Gamla betrothed Martha the daughter of Boethus, and he consummated the union after that the king appointed him High Priest.
- 6:5 A common priest may not marry a sterile woman unless he already had a wife or children. R. Judah says: Although he already had a wife or children he may not marry a sterile woman, **for** (כי) such is the harlot spoken of in the Law (Lev. 21: 07).
- 6:6 No man may abstain from keeping the law *Be fruitful and multiply* (Gen. 1:28) unless he already had children: according to the School of Shammai, two sons; according to the School of Hillel, a son and a daughter, **for it is written** (ובראשיתו), *Male and female created he them* (Gen. 5:2).
- The duty to be fruitful and multiply falls on the man but not on the woman. R. Johanan b. Baroka says: Of them both **it is written** (ובראשיתו), *And God blessed them and God said unto them, Be fruitful and multiply* (Gen. 1:28).
- 7:1 *Son barzel* slaves are such that, if they die, the loss is suffered by the husband, and if their value increases the husband enjoys the increase; **since** (כי) his obligation is to restore them in full they may eat of Heave-offering.
- 7:3 If the daughter of an Israelite was married to a priest and he died leaving her with child, her slaves may not eat of Heave-offering **by virtue** (בפניו) of the portion that falls to the unborn child; **for** (כי) the unborn child can deprive [a woman] of the right to eat [of Heave-offering] but it cannot bestow [on her] the right. So R. Jose.
- 8:2 *He that is wounded in the stones or hath his privy member cut off* (Deut. 23:1) is permitted to marry a female proselyte or a freed slave, only he may not enter into the assembly, **for it is written** (ובראשיתו), *He that is wounded in the stones or hath his privy member cut off shall not enter into the assembly of the Lord* (Deut. 23:1).
- 8:3 *An Ammonite or a Moabite* is forbidden and forbidden for all time [to marry an Israelite], but their women are permitted forthwith. An Egyptian or an Edomite whether male or female is forbidden only for three generations. R. Simeon declares their women forthwith permitted. R. Simeon said: It is an inference **from the less to the greater** (קל וחומר): If where the menfolk are for all time forbidden their women are forthwith permitted, how much the more where the menfolk are forbidden for but three generations should their women be forthwith permitted! They answered: If this is *Halakhah* [which thou hast received] we receive it; but if it is but an inference [of thine own] a counter-inference may rebut it. He answered: Not so, but I declare what is *Halakhah*.
- 8:4 R. Joshua said: I have heard a tradition that a eunuch submits to *halitzah* and his brothers submit to *halitzah* from his wife; also [I have heard a tradition] that a eunuch does not submit to *halitzah* nor do his brothers submit to *halitzah* from his wife; and I cannot explain it. R. Akiba said: I will explain it. If he was a man-made eunuch he submits to *halitzah* and his brothers submit to *halitzah* from his wife, **because** (בפניו) there was a time when he was potent; but if he was a eunuch by nature he does not submit to *halitzah* nor do his brothers submit to *halitzah* from his wife, **because** (בפניו) there never was a time when he was potent. R. Eliezer says: Not so! But a eunuch by nature submits to *halitzah* and his brothers submit to *halitzah* from his wife, **since** (בפניו) he may be healed; but a man-made eunuch does not submit to *halitzah* nor do his brothers submit to *halitzah* from his wife, **since** (בפניו) he cannot be healed.
- 8:5 If a eunuch submitted to *halitzah* from his deceased brother's wife, he does not disqualify her [for marriage with a priest]; but if he had connexion he disqualifies her, **since** (בפניו) such connexion is of the nature of fornication.

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So, too, if brothers submitted to *halitzah* from a woman that is sterile they do not disqualify her, **since** (מפני ש) connexion with her is of the nature of fornication.

- 8:6 R. Judah says: if one of doubtful sex was found to be a male when the impediment was removed, he may not submit to *halitzah* **since** (מפני ש) he is accounted a eunuch [by nature].
- 9:6 [...] If her son by the Israelite died, she may return to her father's house; and **of her it is written** (על זו נאמר), *If she is returned unto her father's house, as in her youth, she shall eat of her father's bread.*
- 10:2 If the court gave her instruction that she could marry again but she contracted a forbidden union, she is liable to the Sin-Offering, **since** (ש) their permission was but that she could marry again.
- 10:3 This did R. Eleazar b. Mattai expound: **[It is written]** *Neither shall they take a woman put away from her husband* (Lev. 21:7); and not 'from a man that is not [yet fully] her husband'.
- 11:4 If a woman's newly-born child was confused with the newly-born child of her daughter-in-law, and they grew up still confused, and married wives and then died, the [unconfused] sons of the daughter-in-law must submit to *halitzah* and may not contract levirate marriage, **since** (ש) [for each] it is in doubt whether the widow is the wife of his brother or of his father's brother: but the [unconfused] sons of the grandmother may either submit to *halitzah* or contract levirate marriage, **since** (ש) [for each] it is only in doubt whether the widow is his brother's wife or his brother's son's wife. If the unconfused sons died, the confused sons must submit to *halitzah* from the widows of the sons of the grandmother, and may not contract levirate marriage, **since** (ש) [for each] it is in doubt whether the widow is his brother's wife or his father's brother's wife; and [as touching the widows of] the sons of the daughter-in-law, [of the two confused sons] one submits to *halitzah* and the second may then contract levirate marriage with the other.
- 12:3 If she drew off the shoe and pronounced the words but did not spit, according to R. Eliezer her *halitzah* is invalid, but according to R. Akiba it is valid. R. Eliezer said: **[It is written,]** *So shall it be done...* (Deut. 25:9), hence aught that is a 'deed' [if unperformed] impairs [the validity of the rite]. R. Akiba answered: [My] proof is from the same verse: *So shall it be done to the man...* (Deut. 25:9); hence [the validity of the rite depends on] any deed that needs to be *done to the man*.
- 12:6 This is the prescribed rite of *halitzah*: When the man and his deceased brother's wife are come to the court the judges proffer such advice to the man as befits him, **for it is written** (שנאמר), *Then the elders of the city shall call him and speak unto him. And she shall say: My husband's brother refuseth to raise up unto his brother a name in Israel: he will not perform the duty of a husband's brother to me. And he shall say, I like not to take her. And they used to say this in the Holy Language. Then shall his brother's wife come unto him in the presence of the elders and loose his shoe from off his foot and spit in his face – such spittle as can be seen by the judges; and she shall answer and say, So shall it be done unto the man that doth not build up his brother's house.* Thus far used they to rehearse [the prescribed words]. But when R. Hyrcanus under the terebinth in Kefar Etam rehearsed it and completed it to the end of the section, the rule was established to complete the section.
- 13:4 **This is the general rule** (זה הכלל): If the bill of divorce followed after that she exercised right of Refusal she is forbidden to return to him; if she exercised right of Refusal after the bill of divorce, she is permitted to return.
- 13:7 If two brothers were married to two sisters that were minors and orphans, and the husband of one of them died, she is exempt [from levirate marriage] **by virtue** (משום) of being the sister of his wife. So too with two sisters that were deaf-mutes. If one was of age and the other a minor and the husband of the minor died, she is exempt [from levirate marriage] **by virtue** (משום) of being the sister of his wife. If the husband of her that was of age died, R. Eliezer says: The minor is instructed to exercise right of Refusal against her husband. Rabban Gamaliel says: If she does so the Refusal is valid; but if she does not, she may wait until she is of age, and then the other is exempt [from levirate marriage] **by virtue** (משום) of being the sister of his wife.
- 14:1 Johanan b. Nuri said: Why should it be that if the woman became a deaf-mute she may be put away, yet if the man

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became a deaf-mute he cannot put her away? They answered: The man that divorces is not like to the woman that is divorced; **for** (ו) a woman is put away with her consent or without it, but a husband can put away his wife only with his own consent.

- 14:4 If two brothers, of whom one was a deaf-mute and the other of sound senses, were married to two sisters of sound senses, and the deaf mute husband of the wife of sound senses died, what shall the husband of sound senses with the wife of sound senses do? [Nothing because] the widow is exempt [from levirate marriage] **by virtue** (בגור) of being the sister of his wife.
- 14:5 If two brothers of sound senses were married to two sisters of whom one was a deaf-mute and the other of sound senses, and the husband of sound senses with the deaf-mute wife died, what shall the husband of sound senses with the wife of sound senses do? [Nothing because] the widow is exempt [from levirate marriage] **by virtue** (בגור) of being the sister of his wife.
- 14:6 If two brothers, of whom one was a deaf-mute and the other of sound senses, were married to two sisters of whom one was a deaf-mute and the other of sound senses, and the deaf-mute husband with the deaf-mute wife died, what shall the husband of sound senses with the wife of sound senses do? [Nothing because] the widow is exempt [from levirate marriage] **by virtue** (בגור) of being the sister of his wife.
- 15:2 The School of Hillel say: We have heard no such tradition save of a woman that returned from the harvest and within the same country, and of **a case that happened in fact** (וכמעשה שהיה). The School of Shammai answered: It is all one whether she returned from the harvest or from the olive-picking or from the vintage, or whether she came from one country to another: the Sages spoke of the harvest only as of a thing that happened in fact. The School of Hillel changed their opinion and taught according to the opinion of the School of Shammai.
- 15:3 The School of Shammai say: She may marry again and take her *Ketubah*. And the School of Hillel say: She may marry again but she may not take her *Ketubah*. The School of Shammai answered: Since ye have declared permissible the graver matter of forbidden intercourse, should ye not also declare permissible the less important matter of property?
- 15:5 If one said, 'He is dead', and the other said, 'He has been killed', R. Meir says: **Since** (הוא יל) they contradict one another neither may marry again. R. Judah and R. Simeon say: **Since** (הוא יל) both admit that he is not alive they may both marry again.
- 15:10 If she and her husband and her brother-in-law went beyond the sea and she said, 'My husband died and then my brother-in-law died', or 'My brother-in-law died and then my husband died', she may not be believed; **for** (ו) a woman may not be believed if she says, 'My brother-in-law is dead' – so that she may marry again[...].
- 16:2 If they had contracted levirate marriage with the brothers-in-law, and these brothers-in-law died, the widows are forbidden to remarry. R. Eliezer says: **Since** (הוא יל) they were permitted to marry their brothers-in-law they are allowed to marry any one.
- 16:4 If a man had fallen into the water, whether or not within sight of shore, his wife is forbidden [to marry another]. R. Meir said: **Once** (מעשה) a man fell into a large well and came up again after three days. But R. Jose said: **Once** (מעשה) a blind man went down into a cave to immerse himself and his guide went down with him; and they waited time enough for life to become extinct and then permitted their wives to marry again. Again **it once happened** (מעשה) in Asya that a man was let down by a rope into the sea and they drew up again naught save his leg. The Sages said: If [the part of the leg recovered] included the part above the knee his wife may marry again; but if only the part below the knee she may not marry again.

Ketuboth

- 1:1 A virgin should be married on a Wednesday and a widow on a Thursday, **for** (ו) in town the court sits twice in

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the week, on Mondays and Thursdays; so that if the husband would lodge a virginity suit he may forthwith go in the morning to the court.

- 1:5 If in Judea a man ate in the house of his father-in-law and had no witnesses he may not lodge a virginity suit against her, **since** (מפניו) he had [already] remained alone with her.
- 2:2 But R. Joshua agrees that if a man said to his fellow, ‘This field belonged to thy father and I bought it from him’, he may be believed, **since** (ש) the mouth that forbade is the mouth that permitted [...].
- 2:5 If a woman said, ‘I have been married but I am now divorced’, she may be believed, **since** (ש) the mouth that forbade is the mouth that permitted.
- If she said, ‘I was taken captive yet I remain clean’, she may be believed, **since** (ש) the mouth that forbade is the mouth that permitted [...].
- 3:2 [...] If a man had connexion with his daughter or his daughter’s daughter or his son’s daughter or his wife’s daughter or her son’s daughter or her daughter’s daughter – through them no fine is incurred, **because** (מפניו) he [that so transgresses] forfeits his life, for his death is at the hands of the court; and he that forfeits his life pays no money, **for it is written** (וְאִם אֵינָהּ עֲרֵוּתָא, *If no damage befall he should be surely fined.* (Ex. 21:22)
- 3:5 But if she was found unchaste or was not fit to be taken in marriage by an Israelite he may not continue [his union] with her, **for it is written** (וְאִם אֵינָהּ עֲרֵוּתָא), *And she shall be to him for a wife* (Deut. 29:22) – a wife that is fit for him.
- 3:9 [If he said] ‘My ox has killed the bondman of such-a-one’, he does not make restitution on his own admission. **This is the general rule:** (זֶה הַכֹּלֵל): whosoever must pay more than the cost of damage done does not pay on his own admission.
- 4:7 If the husband had not written out a *Ketubah* for his wife, she may still claim 200 *denars* if she was a virgin [at marriage] or one *mina* if she was a widow, **since** (ש) that is a condition enjoined by the court. If he assigned her a field worth one *mina* instead of 200 *zuz*, and did not write ‘All my goods are surety for thy *Ketubah*’, he is still liable [for the payment of the whole 200 *zuz*], **since** (ש) that is a condition enjoined by the court.
- 4:8 If he had not written for her, ‘If thou art taken captive I will redeem thee and take thee again as my wife’, or, if she was the wife of a priest, [I will redeem thee and] will bring thee back to thine own city, he is still liable [so to do] **since** (ש) that is a condition enjoined by the court.
- 4:10 If he had not written for her, ‘Male children which thou shalt have by me shall inherit thy *Ketubah* besides the portion which they receive with their brethern’, he is still liable [thereto], **since** (ש) this is a condition enjoined by the court.
- 4:11 [If he had not written for her], ‘Female children which thou shalt have by me shall dwell in my house and receive maintenance from my goods until they marry husbands’, he is still liable [thereto], **since** (ש) this is a condition enjoined by the court.
- 4:12 [If he had not written for her], ‘Thou shalt dwell in my house and receive maintenance from my goods so long as thou remainest a widow in my house’, he is still liable [thereto], **since** (ש) this is a condition enjoined by the court.
- 5:1 R. Eliezer b. Azariah says: If after wedlock, she may lay claim to the whole; but if after betrothal [only], a virgin may lay claim but to 200 *denars* and a widow to one *mina*, **since** (ש) he assigned her [the whole] only on the condition that he married her.
- 5:5 R. Eliezer says: Even if she brought him in a hundred bondwomen he should compel her to work in wool, **for** (ש)

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idleness leads to unchastity. Rabban Simeon b. Gamaliel says: Moreover if a man put his wife under a vow to do no work he should put her away and give her her *Ketubah*, **for** (וְ) idleness leads to lowness of spirit.

7:5 If a man vowed to abstain from his wife should she go to a house of mourning or a house of feasting, he must put her away and give her her *Ketubah*, **because** (מִפְּנֵי וְ) he had closed [all doors] against her.

7:8 And if there was a bath-house in that town he may not make complaint even of secret defects, **since** (מִפְּנֵי וְ) he can inquire about her from her woman kinsfolk.

7:10 And of all these R. Meir said: Although the husband made it a condition with her [to marry him despite his defects], she may say, 'I thought that I could endure it, but now I cannot endure it'. But the Sages say: She must endure him in spite of herself, save only him that is afflicted with boils, **because** (מִפְּנֵי וְ) she will enervate him. It **once happened** (בְּעֵשֶׂה) in Sidon that a tanner died and had a brother who was a tanner. The Sages said: She may say, 'Thy brother I could endure; but thee I cannot endure'.

8:5 If she inherited old bondmen and bondwomen they should be sold and land bought with their price, and the husband has the use of it. Rabban Simeon b. Gamaliel says: She should not sell them, **because** (מִפְּנֵי וְ) they are the pride of her father's house.

If she inherited old olive-trees or vines they should be sold as wood and land both with their price, and the husband has the use of it. R. Judah says: She should not sell them, **because** (מִפְּנֵי וְ) they are the pride of her father's house.

9:1 If he declared to her in writing, 'I will have neither right nor claim to thy property or to the fruits thereof, or to the fruits of the fruits thereof during thy lifetime or at thy death', he may not enjoy the fruits during her lifetime and when she dies he may not inherit her property. Rabban Simeon b. Gamaliel says: If she dies he may still inherit her property **because** (מִפְּנֵי וְ) he made a condition contrary to what is enjoined in the Law (Num. 27:11), and if a man makes a condition contrary to what is enjoined in the Law, his condition is void.

9:2 If a man died and left a wife, a creditor, and heirs, and had goods on deposit or on loan in the hand of others [...], R. Akiba says: They may not show pity in a legal suit: but rather, it must be given to the heirs; **for** (וְ) all the others need to swear to their claim on oath, but not so the heirs.

9:3 If the wife gained possession of more than her *Ketubah* assigned to her, or a creditor more than his due, the surplus [...], R. Akiba says: they may not show pity in a legal suit: but rather, it is given to the heirs; **for** (וְ) all the others need to swear to their claim on oath, but not so the heirs.

9:9 [If she brought forth] two *Ketubahs* and one bill of divorce, or one *Ketubah* and two bills of divorce, or a *Ketubah* and a bill of divorce and a [proof of her husband's] death, she is entitled only to one *Ketubah*; **for** (וְ) if a man puts away his wife and then receives her back, he receives her back only on the conditions of her first *Ketubah*. If a father gave his son, that was a minor, in marriage, her *Ketubah* remains valid, **since** (שְׁעָל) on this condition he took her for his wife. If a man became a proselyte and his wife with him, her *Ketubah* remains valid, **since** (שְׁעָל) on this condition he has kept her as his wife.

11:2 A widow, whether she became a widow after betrothal or after wedlock, may sell [property that was security for her *Ketubah*] without the consent of the court. R. Shimeon says: [If she became a widow] after wedlock she may sell without the consent of the court; but if after betrothal [only], she may not sell save with the consent of the court, **since** (מִפְּנֵי וְ) she has no claim to maintenance, and she that has no claim to maintenance may not sell save with the consent of the court.

12:2 When she is married her husband must give her maintenance, while they each give her the cost of her maintenance; when they die their [own] daughters receive maintenance from the unassigned property, while she receives maintenance from property [thereto] assigned, **since** (מִפְּנֵי וְ) she is, as it were, a creditor.

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13:10 He may take her forth from a bad dwelling to a good one, but not from a good dwelling to a bad one. R. Simeon b. Gamaliel says: Nor even from a bad dwelling to a good one, **since** (שׁ מִפְּנֵי) the good one puts her to the proof.

Nedarim

2:2 Thus if he said, ‘*Konam* be the *Sukkah* I build!’ [or] ‘the *Lulab* I carry’ [or] ‘the phylacteries I put on!’ with vows this is binding, but with oaths it is not binding, **since** (שׁ) none may swear on oath to transgress religious duties.

2:4 But R. Judah says: If the vow was of undefined *Terumah*, in Judea the vow is binding; but in Galilee it is not binding, **since** (שׁ) the men of Galilee know naught of the *Terumah* of the Temple-chamber. [And if the vow was of] undefined devoted things, in Judea it is not binding, but in Galilee it is binding, **since** (שׁ) the people of Galilee know naught of things devoted to [the use of] the priest.

3:2 If, [to wit, a man said, *Konam!*] if I have eaten or if I have drunken!’ and he remembered that he had eaten or drunken; [or if he said, ‘*Konam* if I eat or if I drink!’ and he forgot and ate and drank; [or if he said,] ‘*Konam* be any benefit my wife has on me, **for** (שׁ) she has stolen my purse!’ or, ‘**for** (שׁ) she has beaten my son!’ and it became known that she had not beaten him, or that she had not stolen it.

3:6 If a man vowed to have no benefit ‘from any sea-farers’, he is permitted to have benefit from land-dwellers; but if ‘from any land-dwellers’, he is forbidden to have benefit from sea-farers, **since** (שׁ) ‘sea-farers’ are included in the term ‘land-dwellers’.

3:7 If a man vowed to have no benefit from ‘them that see the sun’, he is forbidden to have benefit from blind folk, **since** (שׁ) the words mean only ‘any that the sun sees’.

3:8 If a man vowed to have no benefit from ‘the black-haired’, he is forbidden to have benefit from the bald and the grey-haired, but not from women and children, **since** (שׁ) only men are called ‘the black-haired’.

3:11 [If he said,] ‘*Konam!* If I have any benefit from the uncircumcised!’ he is permitted to have benefit from the uncircumcised of Israel, but not from the circumcised from other nations. [If he said,] ‘*Konam!* If I have any benefit from the circumcised!’ he is forbidden to have benefit [even] from the uncircumcised in Israel but he is permitted to have benefit from the circumcised among the nations of the world, **since** (שׁ) ‘uncircumcised’ is but used as a name for the gentiles, **as it is written** (וְכָל הַגּוֹיִם הַזֵּה אֲנִי מְבַרְכֵם), *For all the [other] nations are uncircumcised, and all the house of Israel are uncircumcised in heart.* Again it says, *This uncircumcised Philistine.* Again it says, *Lest the daughters of the Philistines rejoice, lest the daughters of uncircumcised triumph.*

4:3 They said to him: The life of the unclean cattle also belongs to God, but the body belongs to the owner, **because** (שׁ) if he will he may sell it to the gentiles or feed the dog with it.

4:4 If a man is forbidden by vow to have any benefit from his fellow and his fellow came in to visit him, he may stand but not sit down. He may heal him, himself, but not what belongs to him; he may bathe with him in a large tub but not in a small one; and he may sleep with him in one bed. R. Judah says: In hot weather, but not in the rainy season, **since** (שׁ מִפְּנֵי) then he would benefit him.

5:5 If he assigned it to the President he need not grant him title. But if to a private person he must grant him title. But the Sages say: It is the same either way: they must grant title; they spoke of the President only as of a usual matter. R. Judah says: The people of Galilee need not assign their share, **since** (שׁ) their fathers have done so for them already.

6:6 R. Judah said: **It once happened that** (וְכַךְ הָיָה) R. Tarfon forbade me eggs which has been cooked therein. They answered to R. Judah: It was indeed so, [yet] when? When he said, ‘Let this flesh be forbidden me!’ – **since** (שׁ) if a man vows to abstain from aught and it is mixed with aught else and is enough to give its flavour, the other too, is forbidden.

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- 6:9 If [a man vowed to abstain from] vegetables, he is permitted wild vegetables, **since** (מפני ש) each has its special name.
- 8:3 [If he said,] ‘... until harvest’, ‘until the vintage’, ‘until the olive-gathering’, it is forbidden him only until these times are come. **This is the general rule** (זה הכלל): whatsoever has a set duration, and a man has said ‘until it is come’, his vow is binding until that time is come. If he said, ‘...until it is [Passover or the Feast of Tabernacles]’, it is binding until the season is over. And whatsoever has not a set duration whether a man has said ‘until it is’, or ‘until it is come’, its vow is binding only until the season is come.
- 8:5 R. Judah says: If he said *Konam!* If I taste wine until it is Passover, it is forbidden him only until Passover-night, **since** (ש) his intention was but [to signify] the time when it is the custom of men to drink wine.
- 8:6 If he said, ‘*Konam!* if I taste flesh until it is the time of the Fast’, it is forbidden him only until the night of the Fast, **since** (ש) he only intended to signify the time when it is **the custom of men** (שדרך בני אדם) to eat flesh. His son, R. Jose says: If a man said *Konam!* If I taste garlic until it is Sabbath, it is forbidden him only until the night of Sabbath, **since** (ש) he only intended [to signify] the time when it is **the custom of men** (שדרך בני אדם) to eat garlic.
- 8:7 If they importune a man to marry his sister’s daughter and he says, ‘*Konam!* If she ever has any benefit from me’, (so, too, if a man divorces his wife and says, ‘*Konam!* If my wife has ever any benefit from me’) they are [still] allowed to have benefit from him, **since** (ש) his vow had reference only to marriage with them. If a man importuned his fellow to eat with him, and his fellow said, *Konam!* If I enter thy house’, or ‘if I taste a drop of cold water of thine’, it is permitted him to enter the other’s house or to drink cold water with him, **since** (ש) his vow had reference only to eating and drinking [at that meal in particular].
- 9:5 They may open the way for a man by reason of his wife’s *Ketubah*. **It once happened** (בעשה) that a man vowed to have no benefit from his wife, whose *Ketubah* was 400 *denars*. She came before R. Akiba and he declared him liable to pay her her *Ketubah*. He said, ‘Rabbi, my father left but 800 *denars*, and my brother took 400 *denars* and I took 400; it is not enough that she should take 200 *denars* and I 200?’ R. Akiba said to him. ‘Even if thou must sell the hair of thy head thou shalt pay her her *Ketubah*’. The husband answered, ‘Had I known that this was so, I had not made my vow’, and R. Akiba released him from his vow.
- 9:8 [If he said,] *Konam!* if I taste of onions, for onions are bad for the heart’, and they say to him, ‘But is not the Cyprus onion good for the heart?’ then Cyprus onions are permitted to him, and not only are Cyprus onion permitted, but all onions. Such a case **once happened** (בעשה) and R. Meir declared all onions permitted.
- 9:10 [If a man said,] ‘*Konam!* if I marry the ugly woman such-a-one’, though she was indeed beautiful; or ‘the black woman such-a-one’, though she was indeed white, or ‘the short woman such-a-one’, though she was indeed tall; she is [yet] permitted to him, **not because** (לא מפני ש) she was ugly and became beautiful, or black and became white, or short and became tall, **but because** (ש) it was a vow made in error. **It once happened** (בעשה) that a man vowed to have no benefit from his sister’s daughter; and they brought her to the house of R. Ishmael and beautified her. R. Ishmael said to him, ‘My son, didst thou to abstain from this one?’ and he said, ‘no!’ and R. Ishmael released him from his vow.
- 10:2 In another matter the power of the husband surpasses that of the father, **in that** (ש) a husband can revoke [her vows] when she is past her girlhood, but the father cannot revoke [her vows] when she is past her girlhood.
- 10:3 If she made a vow while she was still betrothed, and was divorced the same day and betrothed again the same day [and so forth], even to a hundred times, her father and her latest husband together revoke her vows. **This is the general rule** (זה הכלל): if she had not, even for an hour, entered into a state of independence, her father and her later husband together revoke her vows.
- 10:4 Among the disciples of the Sages, before the daughter of one of them left his control, **the custom was**

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(דרך תלמידי חכמים) for him to say to her, 'Let every vow that thou hast vowed in my house be revoked'. So, too, the husband, before she entered into his control, used to say to her, 'Let every vow that thou didst vow before thou camest into my control be revoked'. **For** (ש) after she is come into his control he cannot revoke [the vows that she had made before marriage].

- 10:5 A woman that was past her girlhood and that had waited the twelve months, or a widow the thirty days, [of them] R. Eliezer says: **Since** (הואיל) her betrothed husband is responsible for her maintenance he can revoke her vows. But the Sages say: Her husband cannot revoke her vows until she has entered into his control.
- 10:6 If a woman was awaiting levirate marriage, whether there was one brother-in-law or two [and one had bespoken her], R. Eliezer says: He may revoke her vows. But R. Joshua says: [He may revoke them] when there is but one [brother-in-law], but not when there are two. R. Akiba says: Neither when there is one nor when there are two. R. Eliezer says: What! If a man can revoke the vows of a woman whom he has acquired for himself, **how much the more** must he be able to revoke the vows of a woman whom he has been caused to acquire by Heaven! (קל וחמר)
- 10:7 R. Eliezer said: If he can make void vows which have already had the force of a prohibition, can he not also make void vows which have not yet the force of a prohibition? (קל וחמר)
They answered: **It is written** (הוא אומר), *Her husband may establish it or her husband may make it void* (Num. 30:14) – such a vow as he may establish, such a vow he may make void; but such a vow as he may not establish, such a vow he may not make void.
- 10:8 [...] If she vowed when darkness was falling [at the close of the Sabbath] he must revoke it before nightfall, **for** (ש) if it became dark and he had not revoked it, he can no longer revoke it.
- 11:9 [**It is written**] *But the vow of a widow or of her that is divorced... shall stand against her* (Num. 30:9). Thus if she said, 'I will be a Nazirite after thirty days', although she married again within the thirty days, he cannot revoke it.

If she made a vow on one day and was divorced on the same day, and he took her back the same day, he may not revoke the vow. **This is the general rule** (זה הכלל): if she had even for an hour entered into a state of independence he cannot revoke or vow.

NEZIKIN

Baba Kamma

- 2:5 If a dog or a kid jumped from a roof and broke any vessels, the owner must pay full damages **since** [through the like acts] they are an attested danger.

R. Tarfon said to them: What! If they have dealt leniently with damage caused by tooth or food in the public domain (when no restitution is imposed) and stringently with like damage in the private domain of him that is injured (when full damages are imposed), then **since** (ש) they have dealt stringently with damage caused by the horn in the public domain (when half-damages are imposed) **ought we not therefore** to deal the more stringently with damage caused by the horn in the private domain of him that was injured, so that full damages shall be imposed!

[...]If they have dealt leniently with damage caused by the tooth or foot in the public domain and stringently with damage caused by the horn, then **since** (ש) they have dealt stringently with damage caused by the tooth or foot in the private domain of him that was injured, **ought we not, therefore**, to deal the more stringently with damage caused by the horn [in the private domain]!

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- 3:5 If one came carrying his jar and another came carrying his beam, and the jar of the one was broken by the beam of the other, the latter is not culpable **since** (ש) each alike has the right of passage.
- 3:9 If an ox worth 200 *zuz* gored another ox worth 200 *zuz* and the carcass was worth nothing, R. Meir said: **Of such it is written** (על זה נאמר), *Then they shall sell the live ox and divide the price of it.* (Ex. 21:35). R. Judah replied: Such indeed is the *Halakhah*; but if thou hast fulfilled [the Scripture], *Then they shall sell the live ox and divide the price of it*, thou hast not yet fulfilled *and the dead also they shall divide*.
- 3:10 If his ox set fire to a stack of corn on the Sabbath he is culpable, but if he himself set fire to a stack of corn on the Sabbath he is not culpable [for burning the stack], **since** (בפיני ש) he is become liable with his life [for profaning the Sabbath].
- 4:3 If an ox of an Israelite gored an ox that belonged to the Temple, or an ox that belonged to the Temple gored the ox of an Israelite, the owner is not culpable, **for it is written** (שנאמר), *The ox of his neighbour* (Ex. 21:35), – not an ox that belongs to the Temple.
- 4:4 R. Jose says: It remains as it was before. An ox from the stadium is not liable to be put to death [if it causes death], **for it is written** (שנאמר) *If an ox gore*, and not ‘If it be made to gore’ (Ex. 21:28).
- 4:7 The ox of a woman or the ox of orphans, or the ox of a guardian, or a wild ox, or an ox belonging to the Temple, or an ox belonging to a proselyte who died without heirs –, these are all liable to death [if they kill a man]. R. Judah says: A wild ox, or an ox belonging to the Temple, or an ox belonging to a proselyte who died are exempt from death, **since** (לפי ש) they have no owner.
- 4:9 R. Judah says: If it was accounted harmless he is liable, but if an attested danger he is not culpable, **for it is written** (שנאמר), *[And it hath been testified to his owner] and he hath not kept him in* (Ex. 21:29); but this one was ‘kept in’.
- 5:5 If he dig a pit in the public domain and an ox or an ass fell into it and died, he is culpable. No matter whether he digs a pit, trench or cavern or ditches or channels, he is culpable. Then **why it is written** (למה נאמר), a *pit* [only]? As a pit which is deep enough to cause death is ten handbreadths deep, so any [cavity] is deep enough to cause death if it is ten handbreadths deep.
- 5:7 An ox and all other cattle are alike under the laws concerning falling into a pit, keeping apart from the mount Sinai, twofold restitution, the restoring of lost property, unloading, muzzling, diverse kinds, and the Sabbath. The like applies also to wild animals and birds. If so, **why it is written** (למה נאמר), *an ox or an ass* [only]? (Ex. 21:33) **Because** (ש) Scripture speaks only of what happens in fact.
- 6:4 If a man caused fire to break out and it consumed wood or stones or dust, he is culpable **for it is written** (שנאמר), *If fire break out and catch in thorns so that the shocks of corn or the standing corn of the field be consumed, he that kindled the fire shall surely make restitution.* (Ex. 22:6)
- If a man kindled fire within his own domain, how far may it spread? R. Eliezer b. Azariah says: It is looked upon as though it was in the midst of a *kor*’s space of land. R. Eliezer says: Sixteen cubits [in every direction], like a public highway. R. Akiba says: Fifty cubits. R. Simeon says: **[It is written,]** *He that kindled the fire shall surely make restitution* – all is in accordance with the nature of the fire.
- 6:5 And the Sages agree with R. Judah that if a man set fire to a large building he must make restitution for everything therein; **for such is the custom** (שכן דרך בני אדם) among men to leave [their goods] in their houses.
- 7:1 More common in use is the rule of twofold restitution (Ex. 22:7) than the rule of fourfold or fivefold restitution, **for** (ש) the rule of twofold restitution applies both to what has life and to what has not life, while the rule of fourfold and fivefold restitution applies only to an ox or a *sheep*, **for it is written** (שנאמר), *If a man shall steal an ox or a sheep and kill it, or sell it, he shall pay five oxen for an ox and four sheep for a sheep.* If a man stole

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[stolen beasts] from a thief he does not make twofold restitution: nor does he that kills or sells what is stolen make fourfold or fivefold restitution.

7:3 If one of the first witnesses was found to be a false witness, the entire evidence is made void, **since** (ש) if there is no [proved case of] theft there is none of killing or selling [what was stolen].

8:1 ‘For loss of time’ – thus, he is looked upon as a watchman of a cucumber-field, **since** (לפי) he has already been paid the value of his hand or foot.

If a man fell from the roof and caused injury and inflicted indignity, he is liable for the injury but not for the indignity **for it is written** (שנאמר), *And she putteth forth her hand and taketh him by the secrets* (Deut. 25:11) – a man is liable only when he acts with intention [of causing injury].

8:2 Herein greater stringency applies to a man than to an ox, **since** (ש) the man must pay for injury, pain, healing, loss of time, and indignity, and make restitution for the value of the young; whereas the ox pays only for the injury and is not liable for the value of the young.

8:5 If a man struck his father or his mother and left a wound, or if he wounded his fellow on the Sabbath, he is not culpable of any of the [five] counts, **in that** (בפניו) he is liable with his life.

8:6 If he tore his ear, plucked out his hair, spat and his spittle touched him, or pulled his cloak from off him, or loosed a woman’s hair in the street, he must pay 400 *zuz*. **This is the general rule** (זה הכלל): all is in accordance with a person’s honour. R. Akiba said: Even the poorest in Israel are looked upon as freemen who have lost their possessions, **for** (ש) they are the sons of Abraham, Isaac and Jacob. **It once happened** (מעשה) that a man unloosed a woman’s hair in the street and she came before R. Akiba and he condemned him to pay her 400 *zuz*. He replied, ‘Rabbi give me time’. And he gave him time. He perceived her standing at the entry of her courtyard and he broke before her a cruse that held an *issar*’s worth of oil. She unloosed her hair and scooped up the oil in her hand and laid her hand on her head. He had set up witnesses in readiness against her and he came before R. Akiba and said to him, ‘Rabbi, should I give such a one as this 400 *zuz*? He answered, ‘Thou hast said naught at all, **since** (ש) he that wounds himself, even though he has not the right, is not culpable; but if others have wounded him, they are culpable’.

8:7 Even though a man pays [him that suffers the indignity], it is not forgiven him until he seeks forgiveness from him, **for it is written** (שנאמר), *Now, therefore, restore the man’s wife... [and he shall pray for thee]*.

And whence do we learn that if he did not forgive him he would be accounted merciless? **Because it is written** (שנאמר), *And Abraham prayed unto God and God healed Abimelech....*

9:1 [...] [if he stole] a ewe, and while it remained with him it grew its wool and he sheared it, he makes restitution according to [the value at] the moment of the theft. **This is the general rule** (זה הכלל): all thieves make restitution according to [the value at] the moment of the theft.

9:7 If he had paid him the value and had sworn [falsely] to him concerning the [added] fifth, he must pay moreover a fifth of the [added] fifth [and so on] until the value [of the added fifth] becomes less than *perutah*’s worth. So, too, with a deposit, **for it is written** (שנאמר), *In a matter of deposit or of bargain or of robbery, or if he have oppressed his neighbour or have found that which was lost and deal falsely therein and swear to a lie* (Lev. 6:2) – such a one must pay the value and the [added] fifth and [offer] a Guilt-offering.

9:11 If a man stole from a proselyte and swore [falsely] to him, and the proselyte died, he must repay the value and the [added] fifth to the priests, and the Guilt-offering to the Altar, **for it is written** (שנאמר), *But if the man have no kinsman to whom restitution may be made for the guilt, the restitution for guilt which is made unto the Lord shall be the priest’s, besides the ram of the atonement whereby atonement shall be made for him* (Num. 5:8).

9:12 If he gave the money to the priests serving their [weekly] Course and then died, the heirs cannot recover it from

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their hands, **for it is written** (שנאמר), *Whatsoever any man giveth the priest it shall be his* (Num. 5:10).

For (ש) if a man brought what he had stolen before he offered his Guilt-offering, he has fulfilled his obligation.

- 10:3 If a man recognized any of his utensils or books in another's hands and the report had gone forth in the city that such things had been stolen, he that had bought them may swear to him how much he had paid and take [this price from the owner and restore the goods]. But if [such a report had] not [gone forth] his claim avails him naught, **since** (ש) I might say that he had first sold them to another and yet another had bought them from him.

Baba Metzia

- 1:6 If a man found bonds of indebtedness he should not restore them [to the creditor] if they record a lien on property; **since** (ש) the court would exact payment for the property; but if they do not record a lien on property he may restore them, **since** (ש) the court would not exact payment from the property. So Rabbi Meir. But the Sages say: In either case he should not restore them, **since** (ש מפני) [in either case] the court would exact payment from the property.

- 1:7 If a man found bills of divorce, or... he should not restore them, **for** (ש) I might say that even if they had been written out, the writer may have bethought himself and determined not to deliver them.

- 2:7 If he named what was lost but could not describe its special marks, it may not be given to him; and it may not be given to a [known] deceiver even though he described its special marks, **for it is written** (שנאמר), *Until thy brother is inquired of concerning it* (Deut. 22:2); [which is to say] until thou shalt inquire of thy brother whether he is a deceiver or not a deceiver.

Whatsoever works and eats, let it work and eat [while it is in the finder's care]; but whatsoever does not work but eats may be sold, **for it is written** (שנאמר), *And thou shalt restore it to him*; [which is to say] See how thou canst restore it to him.

- 2:9 If he restored it and escaped again, and he restored it again and it escaped yet again, [...] he must still restore it, **for it is written** (שנאמר), *Thou shalt surely bring them again unto thy brother.* (Deut. 22:1)

- 2:10 If he unloaded it [an ass fallen under its load] and loaded it [afresh] and again unloaded it and loaded it [afresh],[...], he is still bound [to continue], **for it is written** (שנאמר), *Thou shalt surely help with him* (Ex. 23:5).

If the owner went and sat him down and said [to his fellow], 'Since a commandment is laid upon thee, if thou desirest to unload, unload!' he is not bound [to unload him], **for it is written** (שנאמר), *with him.*

R. Jose the Galilean says: If the beast was bearing more than its proper load he is not bound [to help to unload it], **for it is written** (שנאמר), *under its burden*, [which is to say] a load which it is able to endure.

- 3:1 If a man left a beast or utensils in his fellow's keeping and they were stolen or lost, and his fellow himself made restitution and would not take an oath **for they have taught**: (שדרו אומר): An unpaid guardian may take an oath and be quit of liability) [...].

- 3:6 If a man left produce in his fellow's keeping, his fellow may not touch it even if it perishes. Rabban Simeon b. Gamaliel says: He may sell it before a court of law; **since** (ש מפני) he may be accounted one that restores lost property to its owner.

- 3:7 R. Judah says: If the quantity was great he may not exact of him any reduction, **since** (ש מפני) the produce increases in bulk [such time as it is stored].

- 3:10 If a man left money in his fellow's keeping, and his fellow bound it up and hung it over his back, or[...], he is

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liable, **since** (ש) he did not guard it after the manner of guardians.

3:12 And the school of Hillel say: He is not liable until he has put it to his use, **for it is written** (רשמו), *If he have not put his hand unto his neighbours goods...*(Ex. 22:8)

4:6 It may be given as second Tithe money without scruple, **for** (ש) he is but an evil-souled person [that would refuse it].

4:10 [...] if a man was descended from proselytes they may not say to him, 'Remember the deeds of thy fathers'; **for it is written** (רשמו), *And a stranger thou shalt not wrong nor shalt thou oppress him* (Ex. 22:21).

4:11 Produce may not be mixed together with other produce, even fresh produce with fresh, and, needless to say, fresh with old; howbeit they have permitted strong wine to be mixed with weak, **since** (ש) this improves it.

A man whose wine is mixed with water may not sell it in a shop unless he has told the buyer [that it is mixed]; and he may not sell it to a merchant even if he has told him, **since** (ש) he [would buy it] only to deceive therewith. In any place where they are **accustomed** (ש) to put water into wine, they may do so.

4:12 He may not sift crushed beans. So Abba Saul. But the Sages permit it. But they agree that he should not sift them [only] at the entry of the store-chamber, **since** (ש) so he would be a deceiver of the eye. He should not bedizen that which he sells, whether human kind, or cattle, or utensils.

5:1 What is usury (*neshek*) and what is increase (*tarbith*)? It is usury (*neshek*) when a man lends a *sela* for five *denars*, or two *seahs* of wheat for three; **because** (ש) he is a 'usurer' (*noshek*).

5:2 The creditor may not dwell without charge in the debtors courtyard or hire it from him at a reduced rate, **since** (ש) that counts as usury.

5:5 A cow or an ass, and whatsoever works and eats, may be put out to rear with the condition of sharing in the profits. Where the **custom** (ש) is to share offspring immediately at birth, they do so; and where the **custom** (ש) is [first] to rear them, they do so.

5:6 A flock may not be accepted from an Israelite on 'iron' terms **since** (ש) that counts as usury, but it may be accepted from a gentile.

5:7 No bargain may be made over produce before its market price is known. After its market price is known a bargain may be made, **for** (ש) even if one dealer has not the produce another will have it.

5:8 The owner may lend his tenants wheat to be repaid in kind, if it is for sowing, but not if it is for food; **for** (ש) Rabban Gamaliel **used to lend** his tenants wheat to be repaid in kind when it was for sowing; and if he lent it when the price was high and it afterward fell, or when it was low and it afterward rose, he used to take wheat back from them at the lower rate – **not because** (ש) such was the rule, but **because** (ש) he was minded to apply to himself the more stringent ruling.

6:4 [...] If [he hired it] to thresh grain and he threshed pulse, he is liable, **since** (ש) pulse is more slippery.

6:5 [...] If [he hired it] to carry grain and he used it to carry [a like weight of] chopped straw, he is liable, **since** (ש) the greater bulk is more difficult to carry.

6:7 If a man gave a loan and took a pledge he is accounted a paid guardian. [...] Abba Saul says: A man may hire out a poor man's pledge and so by degrees reduce the debt, **for so** (ש) he is like to one that restores lost property.

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- 7:1 If a man hired labourers and bade them to work early or to work late, he has no right to compel them to do so where **the custom** (מקום ש) is not to work early or not to work late; where **the custom** (מקום ש) is to give them their food he should give it them, and where the custom is to provide them with sweetstuff he should provide it. **Everything should follow local use** (הכל כמנהג המדינה). It **once happened** (מעשה) that R. Johanan b. Matthias said to his son, ‘Go and hire labourers for us’. He went and undertook to give them their food. When he came to his father, his father said to him, ‘My son, even if thou preparest them a banquet like Salomon’s in his time thou wilt not have fulfilled thy duty towards them, **for** (ש) they are sons of Abraham, Isaac, and Jacob. But, rather, before they begin the work go and say to them, ‘On condition that I am not bound to give you more than bread and pulse only’. Rabban Simeon b. Gamaliel says: it was not necessary to speak thus, **for everything should follow local use** (הכל כמנהג המדינה).
- 7:6 A man may exact terms for himself and for his son or daughter that are of age, and for his bondman or bondwoman that are of age, and for his wife, **since** (מפני ש) these have understanding; but he may not exact terms for his son or daughter that are not of age, or for his bondman or bondwoman that are not of age, or for his cattle, **since** (מפני ש) these have no understanding.
- 7:8 They that guard [gathered] produce may eat thereof according to **the customs** (מהלכות המדינה) of the country, but not by virtue of what is enjoined in the Law.
- 8:1 If a man borrowed a cow together with the service of its owner, or hired its owner [...], he is not liable, **for it is written** (שנאמר), *If the owner thereof be with it he shall not make it good* (Ex. 22,15). But if the first borrowed the cow and afterward borrowed or hired the service of the owner, and the cow died, he is liable, **for it is written** (שנאמר), *The owner thereof not being with it he shall surely make restitution* (Ex. 22:14).
- 8:8 If he let it [the house] by the month and the year was made a leap-year, the advantage falls to the owner. It **once happened** (מעשה) in Sepphoris that a person hired a bath-house from his fellow at ‘twelve golden *denars* a year, one *denar* a month’, and the case came before Rabban Simeon b. Gamaliel and before R. Jose. They said: Let them share the advantage of the added month.
- 9:1 If a man leased a field from his fellow and **the custom** (מקום ש) of the place was to cut the crops, he must cut them; if **the custom** (מקום ש) was to uproot them he must uproot them; if **the custom** (מקום ש) was to plough after reaping, he must plough. **Everything should follow local use** (הכל כמנהג המדינה).
- 9:3 If a man leased a field from his fellow and he let it lie fallow, they assess how much it was likely to have yielded and he must pay the owner accordingly, **for** (ש) thus such a lease prescribes: ‘If I suffer the land to lie fallow and do not till it I will pay thee at the rate of its highest yield’.
- 9:13 If a man lent aught to his fellow he may only exact a pledge from him with the consent of the court, and he may not enter his house to take his pledge, **for it is written** (שנאמר), *Thou shalt stand without* (Deut. 24,11).
- A pledge may not be exacted from a widow whether she is poor or rich, **as it is written** (שנאמר), *Thou shalt not take the widow’s raiment in pledge.* (Deut. 24:6)
- If a man takes away the mill-stones, he transgresses a negative commandment, and he is also culpable **by virtue** (בגורם) of taking two utensils together, **for it is written** (שנאמר), *No man shall take the mill and the upper millstone to pledge.* (Deut. 24:6)

Horayoth

- 1:1 If the court gave a decision contrary to any of the commandments enjoined in the Law and some man went and acted at their word [transgressing] unwittingly, whether they acted so and he acted so together with them, or they acted so and he acted so after them, or whether they did not act so but he acted so, he is not culpable, **since** (ש)

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מפני (מפני) he depended on the [decision of the] court. If the court gave a decision [contrary to the Law] and one of them knew that they had erred, or a disciple that was himself fit to give a decision [knew that they had erred], went and acted at their word, whether they acted so and he acted so together with them, or they acted so and he acted so after them, or whether they did not act so but he acted so, such a one is culpable, **since** (מפני) he did not depend on the [decision of the] court. **This is the general rule** (זה הכלל): he that can depend on himself is culpable, but he that must depend on the court is not culpable.

1:3 [...] ‘The Law treats of idolatry, but if a man bows down [before an idol] he is not culpable’, the court is culpable; **for it is written** (רשמו), *If something be hid* (Lev. 4:13) – something, but not the whole principle.

1:4 If the court gave a decision and one of them knew that they had erred and said to them, ‘Ye do err’, or if the chief judge of the court was not there, or if one of them was a proselyte or a bastard or a *Nathin* or too aged [or one] that never had children, they are not culpable; for here **it is written** (רשמו) *Congregation* and there **it is written** (רשמו) *Congregation*: as the ‘congregation’ there implies that they should all be fit to give a decision, so here it is implied that they should all be fit to give a decision.

1:5 If the court gave a decision [transgressing unwittingly], and seven tribes or the greater part of them acted at their word, they must offer a bullock, and if there befell idolatry, they must bring a bullock and a he-goat. So R. Meir. R. Judah says: The seven tribes which sinned must offer seven bullocks and the rest of the tribes which did not sin must offer a bullock on their behalf, **for** (ו) they also which had not sinned must offer on behalf of them that had sinned.

If the court of one of the tribes gave a decision [transgressing unwittingly], and that tribe acted at their word, that tribe is culpable, but the rest of the tribes are not culpable. So R. Judah. But the Sages say: They become culpable only through a decision given by the Great Court, **for it is written** (רשמו), *And if the whole congregation of Israel shall err* (Lev. 4:13) – and not the congregation of that tribe alone.

2:1 [...] If he made it unwittingly but acted [transgressing] wantonly, or made it wantonly but acted [transgressing] unwittingly, he is exempt; **for** (ו) the decision of an anointed [High] Priest made for himself is like the decision given by the court for the congregation.

2:4 They do not become liable through [a decision unwittingly transgressing] a negative or a positive command concerning the Temple, nor need they bring a Suspensive Guilt-offering **because** (ל) of a positive or a negative command concerning the Temple. But they become liable through [a decision unwittingly transgressing] a negative or a positive command concerning the menstruant, and they must bring a Suspensive Guilt-offering **because** (ל) of a positive or a negative command concerning the menstruant. What is the positive command concerning a menstruant? ‘Separate thyself from a menstruant’. And the negative command? ‘Thou shalt not come in unto a menstruant’.

2:5 They do not become liable through [unwitting transgression of the law touching] him that *heareth the voice of adjuration*, or him that *sweareth rashly with his lips*, or uncleanness in what concerns the Temple and its Hallowed Things. So, too, is it with a ruler. So R. Jose Galilean. R. Akiba says: The ruler is liable in each of these cases excepting that of him that *heareth the voice of adjuration*, **because** (ו) the king can neither judge nor be judged; he cannot act as a witness and others cannot bear witness against him.

3:3 And who is the Ruler? This is the King, **for it is written** (רשמו), *And doeth any one of all the things which the Lord his God hath Commanded [not to be done]* – a Ruler that has above him none save the Lord his God.