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**THE SECOND CHAPTER OF TRACTATE MAKKOTH OF THE BABYLONIAN
TALMUD: A CRITICAL ANALYSIS OF FORM, CONTENT,
MODE OF EXPRESSION AND IDEA**

HOWARD A. KOSOVSKY

**Thesis submitted in partial fulfillment
of the requirements for the Degree of
Master of Arts in Hebrew Letters and
Ordination**

Hebrew Union College-Jewish Institute of Religion

1967

Referee, Professor Alexander Guttman

to

my wife,

BARBARA,

whose help, encouragement,
inspiration and love have
brought me to the
fulfillment of a
life-long dream

DIGEST

The purpose of this thesis, as its title implies, is to present a complete analysis of a chapter of Talmud, in this case the second chapter of tractate Makkoth of the Babylonian Talmud. This chapter of Makkoth begins on page 7a and ends on page 13a in the standard Talmud editions.

Various aspects of analysis are considered in this thesis. Our principal concern lies in the area of structure. We seek to determine the way in which the Gemara continued to build up the Oral Law upon the foundation set down by the Mishnah. In each section of Talmud, we direct our efforts to the end of ascertaining what the interests of the Gemara are.

In the course of our presentation, we determine that there are several tendencies of the Gemara. Among them, for instance, is the tendency to try to uphold the Mishnah, whenever possible, against the various objections that are offered against it. We also determine the categories of material that are included within the Gemara.

The method that we employ in our analysis is to look at each point of the text and determine its purpose for being where it is, its function in the text, and its implications. We further consider each argument and each part of an argument in relationship to the total structure of the Gemara to each Mishnah division.

The topic of the Mishnah upon which the Gemara to the second chapter of tractate Makkoth is based is the topic of manslaughter, and the organizing principle of this chapter is the concept of the city of asylum. As a by-product of our analysis, therefore, we consider in depth the material relating to the main topic of the chapter. From this consideration we learn the outlook of the redactors, and we see how the Talmud views the entire institution relating to the main topic of the chapter.

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INTRODUCTION

Of the literary works that are a part of the treasures of our Jewish heritage, none, perhaps, has had a greater influence upon Jewish life than the Babylonian Talmud. In the world of our own day, there are academies in which the study of this work never ceases.

Yet, to the uninitiated, this work, the Talmud, seems as a nebulous fog. To make matters worse, the first steps in learning how to handle a page of Talmud often discourage a would-be prospect from entering into it. He is confronted with endless debates, endless stories, all seemingly disconnected and unstructured. To comprehend the material seems an almost impossible task. We believe, however, that it does not have to be this way.

Following an idea put forth by Louis Jacobs in his book, Studies in Talmudic Logic, we shall attempt in the coming pages to show that the Talmud is a highly structured work, that almost no material that is contained within it is randomly placed in this location or that. Furthermore, all material that was placed in a given location, we will try to demonstrate, was placed there for some particular reason by the redactors, even if that reason be only to produce drama or to produce literary effect.

Our method is one of textual analysis in which we shall attempt to show the relationship of each idea or statement both to other related statements surrounding it and to entire sections of which it is a part. Utilizing this method, we shall try to show the various tendencies of the Gemara and to uncover those patterns and forms that repeat themselves over and over again.

The section of the Babylonian Talmud that we have chosen to analyze is the second chapter of tractate Makkoth, which is a treatise on "homicide in error." As a by-product of our analysis, we shall consider in great detail the contents of this chapter.

The text that we have used is the standard Talmud text based upon the Bomberg editions of the sixteenth century. This text differs from earlier texts, principally the Munich manuscript of which there is an extant copy, in that the Mishnah and Gemara are divided into sections in our text in contrast to the Munich text where neither the Mishnah nor the Gemara was broken up but ran continuously down the page. The Mishnah, as it is broken down in our standard text, also differs from the way that it is divided in the standard printed Mishnah editions. However, it will become apparent that the breakdown of a complete text into Mishnah-Gemara divisions that we have in our standard Talmud text follows a pattern; and the related Gemara material given to any one section of Mishnah rarely deviates

from the section of Mishnah under consideration.

A final word on the organization of this thesis. For purposes of convenience we have divided this thesis into chapters corresponding to complete Mishnah-Gemara sections of the Talmud, each chapter representing one section of Mishnah and all of the Gemara included within that section of Mishnah as presented in our text.

CHAPTER I

B. MAKKOTH 7A-7B

The intent of the Mishnah to the section of Talmud we first consider is to set down the criteria, in cases of accidental homicide, for determining when the person involved in killing must seek sanctuary from the blood avenger by going to one of the cities of asylum and when, under the law, he is allowed to remain in society. The cases which the Mishnah will present in which the manslayer will have to seek sanctuary, it will be noted, will be cases of accidental homicide involving some negligence. On the other hand, the cases in which the manslayer will not have to seek protection from the blood avenger will be cases involving homicide which is purely accidental. Further, the Mishnah will give us the determining rule for ascertaining whether or not negligence is involved. The Mishnah as we have it in our Talmud text may be divided into three parts.

The first part of the Mishnah sets down the prime condition that must be met before a person involved in the killing of another human being must or may go to one of the cities of asylum to have sanctuary from the blood avenger: he must have killed ^{וְהָיָה}, which, for purposes of consistency, we shall from this

point on translate as inadvertently. By the term, inadvertently, we shall mean accidentally with some negligence involved; and we shall call such inadvertent killing manslaughter. This first part of the Mishnah cites three cases where the manslayer must seek refuge in one of the cities of asylum: the case wherein a man is pushing a roller on a roof¹ and the roller falls over the edge and lands on someone and thereby causes death to result; the case wherein a man is lowering a cask which falls on someone and thereby causes death to result; and the case wherein a man, while descending upon a ladder, falls from the ladder and lands on someone and thereby causes death of the person upon whom he landed to result.

The second part of our Mishnah is the converse of the first part, and it cites three cases in which the person involved does not have to go to one of the cities of asylum. The element of killing inadvertently, as defined above, is absent from the second part of the Mishnah; and the killing is purely accidental. Therefore, the person involved will go free. The three cases are as follows: the case wherein a man is pulling up a roller which falls and lands on someone and thereby causes death to result; the case wherein while a man is raising a cask the rope breaks, and the cask falls on someone thereby causing death to result; and the case wherein a man while ascending upon a ladder falls off

and lands on someone and thereby causes death of the person upon whom he landed to result.

The third part of the Mishnah presents a general rule, gleaned from observation of the cases in the first two parts of the Mishnah, which is used to determine whether or not the person involved must seek refuge from the blood avenger in the city of asylum: if death occurs as a result of a downward movement, the man goes into asylum; if death occurs as the result of a non-downward movement, the man does not go into asylum (but, rather, goes free).

It is on the basis of the third part of the Mishnah that we set up our determining categories concerning asylum. Implied in the concept of death as a result of a downward movement is the element of inadvertent killing. The first part of the Mishnah has already given us the notion of killing *שגגה*. Therefore, we assume that it is contained in the element of downward movement. Furthermore, while it will later be seen in a future Mishnah that there is a certain element of punishment involved in having to go to the city of asylum, the main reason that he has to go there is to escape the blood avenger who, it will be shown, can kill him if he finds him outside of the boundaries of the city. Similarly, in the case of death being caused by a non-downward movement, the Mishnah is referring to a case where the cause of death is purely accidental, and the man, therefore,

does not, in this case, have to seek protection from the blood avenger.

The Gemara begins with a call for a scriptural authority for the distinctions as summarized in the general rule of the Mishnah. Involved here is an attempt to legitimize the general rule (as well as the rest of the Mishnah since it is summed up by the general rule). Samuel (first generation Babylonian Amora)² therefore cites the biblical source for the general rule of the Mishnah, "or he let it fall [italics mine] upon him that he dies," which is found in Numbers 35:23. This verse is interpreted to mean that one does not have to go to the city of asylum, that is, seek refuge from the blood avenger, unless death is caused by something falling by a downward movement on the part of the man-slayer. Therefore, as far as the Gemara is concerned, the Mishnah is derived from Scripture and is legitimate.

The next section of the Gemara is an expansion of the Mishnah by means of the bringing of a well-known Baraitha³ for consideration. While the Mishnah told us who does not have to go to the city of asylum, this Baraitha informs us who cannot go to the city of asylum, that is, who is excluded from there. This Baraitha is based upon an interpretation of a passage from Scripture.

This Baraitha excludes two classes of killers from the city of asylum. Since we read in Numbers 35:11 and 35:15 that the killing must take place ^{בְּעִירָתוֹ},

inadvertently, it follows that one who murders wilfully is automatically excluded from the city of asylum. Also, since we read in Deuteronomy 15:4 that the killing must take place ~~נצח~~ ^{לפני} ~~העדה~~ ^{העדה}, without prior knowledge, it follows that one who murders with premeditation, with intent, is likewise automatically excluded from the city of asylum.

The Gemara will now object to each of these points in turn on the basis of their both being obvious points, points that everyone knows without their being stated. This type of objection, called a *le'olam*, is a common phenomenon in the Gemara. Whenever the claim, "obvious," is made by the Gemara, it must be shown that there is something involved which is not obvious, which one would not know unless the point were made.

To the statement that the wilful murderer is automatically excluded from the city of asylum, the Gemara objects by claiming "obvious" on the ground that everyone knows that a wilful murderer is deserving of the death penalty, is guilty of a capital crime for which he of course does not get the protection of the city of asylum but, instead, upon being proven guilty, is put to death at the hand of the court.

Rabba (bar Joseph bar Hama, fourth generation Babylonian Amora) counters the objection by showing that there is something else implied which one would not know unless the point were made. That is, what is also covered by the Baraita is this case of exclusion from the city of

asylum which one would not know except for the statement of the Baraitha: excluded from the city of asylum is one who thinks that killing is permissible.

To this point by Rabba, Abaye (fourth generation Babylonian Amora) objects on the ground that one who thinks that killing is permissible is a victim of mischance, is constrained, is forced to kill, and such a one should not be given over to death because he had no choice really but to kill. Rabba answers this point by saying that he considers a person who thinks that killing is permissible to be one closely akin to a wilful murderer. This answer satisfies the objection because it implies that Rabba's original point is consistent with Rabba's basic position, and the objection is only a difference of opinion over the category into which the one who thinks that killing is permissible stands. Hence, Rabba's counter to the original objection of "obvious" holds as valid.

The identical objection of "obvious" is made to the second statement of the Baraitha, that one who murders with premeditation, with intent, is automatically excluded from the city of asylum, on the same ground as the first objections on the basis of being "obvious": everyone knows that one who murders with premeditation is deserving of the death penalty.

Rabbah (bar Nahmani, third generation Babylonian Amora) counters this objection by showing, as did Rabba

above, that there is something else implied which one would not know unless the Baraitha indeed made its point. Rabbah therefore shows cases covered by the point made by the Baraitha which clearly are not obvious, and which one would not know without the explicit statement. The three cases are these, in all of which there is an intent to kill and in all of which the person killing is not afforded the protection of asylum but must avoid the blood avenger as best he can: the case of a man who intends to kill an animal but who accidentally kills a man; the case of a man who intends to kill a non-Jew but who accidentally kills an Israelite; the case of a man who intends to kill a premature baby (within thirty days of birth) but who through his error kills a fully developed infant. On the basis of this, another criterion is added by the Gemara to the prerequisites set by the Mishnah in order for a person to be granted asylum, and we now have the following: in order to go into asylum, to be adjudicated a manslayer, the killing must have taken place inadvertently; and the killer can have had not intent to kill anything at the time that the manslaughter took place.

The next section of the Gemara gives us a further expansion of the Mishnah by citing another well-known Baraitha. This Baraitha which names specific cases contains exclusions from and inclusions in the cities of asylum of the people involved in the cases mentioned.

The first part of the Baraitha is based upon an interpretation of Numbers 35:22: "If suddenly, without enmity, he [the manslayer] pushes him [the man slain] or casts at him any implement without lying in wait; . . ."

The Baraitha gives us the following: The phrase, "suddenly," means that one who kills while rounding a corner carrying a dangerous object is excluded from the city of asylum (since there is an aspect of deliberateness involved in this case); the phrase, "without enmity," means that an adversary who kills is excluded from the city of asylum (since an adversary feel enmity toward the man he killed); the phrase, "he pushes him," means that one who kills another while pushing with his body must go to the city of asylum; the phrase, "or casts upon him," means one involved in killing in the case of a downward motion prerequisite to an upward motion must seek refuge in the city of asylum; the phrase, "without lying in wait," means that one who kills while intending to throw to one side but where the missile swerved to another is excluded from exile. (The Hebrew of the last-quoted phrase is **וְלֹא יִשְׁכַּח**, the last word of which the author of this Baraitha took to mean not "lying in wait," from **וְלֹא יִשְׁכַּח**, but "throwing off to the side," from **וְלֹא יִשְׁכַּח**. Hence, he read the phrase as "without throwing off to the side," and one who threw off to the side, therefore, could not enter the city of asylum).

The Baraitha continues with two more exegeses

of verses dealing with conditions that set the standard for a manslayer's going to the city of asylum. The first exegesis is of a phrase in Exodus 21:13 ^{וְכִי יִשְׁלֹךְ אִישׁ אֶבֶן}, which the Baraitha understands to mean, "who did not hit the point," though scientifically it means, "who did not lie in wait." This not hitting the point being a pre-condition to being allowed into the city of asylum, the Baraitha take the phrase of Exodus 21:13 to be a biblical source for the exclusion from the city of a manslayer who while intending to throw a missile a distance of two units, threw it four units and killed. The second exegesis is of a phrase in Deuteronomy 19:5, "And when one comes with into a forest." From this phrase the Baraitha concludes a standard: just as a forest is a domain of free access to both the injured and the injurer, so must every place of injury be a domain of free access to both parties for asylum to be necessary from the blood avenger. This would exclude the necessity of having to go to the city of asylum when the death took place in a private court into which the man killed had no right of access.⁴

The next section of the Gemara presents a discussion involving a case wherein it is open to debate whether or not the person involved must go to the city of asylum to seek refuge from the blood avenger. The element of doubt involved is the direction of the death blow, i.e., whether it is a case of downward movement, or upward movement.

R. Abbahu (third generation Palestinian Amora)

asks R. Yohanan (bar Nappaha, second generation Palestinian Amora) this question: in the case of a man going up a ladder where a rung slips out from under him and he falls, lands on a person and kills him, is the ruling that death is caused by an ascent motion or of a descent motion? The implication of the question is this: do we in ruling consider only the man who was occupied in ascent, or do we consider only the rung which the man, climbing on it, exerted downward pressure upon it and caused it to be thrust downward?⁵

R. Yohanan replies that this is a case of a downward motion (the force exerted upon the rung) which was a prerequisite (for it is impossible to climb a ladder without exerting such force) to an upward motion (the case covered by the previous Baraitha); and, therefore, the man has to go to the city of asylum. R. Abbahu objects from a higher authority, the Mishnah, which states in the general principle of the לַחַיִּים that if death is a result of a downward motion the man must go to the city of asylum and if death is a result of a non-downward motion the man does not have to go to the city of asylum. Since the man was ascending the ladder, death was a result of a non-downward motion; and the man should not have to go to the city of asylum. (Every general rule includes something, according to Talmudic principle; and therefore R. Abbahu is basing his argument upon the position that the general rule of the לַחַיִּים of our Mishnah includes such

a case as the one before us now.)

R. Yohanan counters R. Abbahu. R. Abbahu's assumption is that every general rule includes something. Therefore, R. Yohanan tries to refute R. Abbahu by forcing him to cite a specific case covered by the part of the *kō'ō* that he did not use: what is an example of the general rule, "Whenever the death is a result of a downward movement, the manslayer goes into asylum."

R. Abbahu replies that such a case is the case of a butcher. However, R. Yohanan can also cite the case of a butcher as falling under the aegis of the principle that he used: "in the case of a downward movement prerequisite to an upward movement resulting in death, the manslayer has to go into exile."

This is exemplified in a Baraitha which is cited and in which there are four versions of a case. A butcher, while chopping, killed a man. The first version reads thus: if he killed in front of himself, he is liable to go to the city of asylum; if he killed behind himself, he is exempt. The second version reads thus: if he killed behind himself, he is liable to go to the city of asylum; if he killed in front of himself, he is exempt. The third version reads thus: whether he killed in front of himself or behind himself he is liable to go to the city of asylum. The fourth version reads thus: whether he killed in front of himself or behind himself he is exempt.

The Gemara then addresses itself to explaining the differences which underlie each version and which lead to the different rulings. The first version refers to a case of a downward movement of the chopper in front of the butcher, in which instance he is liable, and an upward movement of the chopper behind the butcher, in which instance he is exempt. The second version refers to a case of an upward movement of the chopper in front of the butcher, in which instance he is exempt, and a downward movement of the chopper behind the butcher, in which instance he is liable. The third version refers to a case of a downward movement of the chopper either in front of or behind the butcher, in which case he is liable. And the fourth version refers to a case of an upward movement of the chopper either in front of or behind the butcher, in which cases he is exempt.

However, on the basis of the above Baraitha, both R. Yohanan and R. Abbahu can argue their respective positions. The controversy is not resolved. However, the Gemara tries to find a tannaitic precedent for the difference of opinion as it brings in a parallel controversy. The tannaitic controversy is as follows: in a case where a man was going up a ladder and the rung broke and he fell and killed a man, what is the ruling? The Gemara states that concerning this case, one view holds that the manslayer is liable to go to the city of asylum, and one view holds that the manslayer is exempt. The Gemara

then asks the following question: is the difference between the two views that one side holds that it is an accident resulting from a downward movement and the other side holds that it is an accident resulting from an upward movement? The answer is no, for both sides agree that the man was going up the ladder, so the death-causing motion was clearly, from the standpoint of the man, as ascent.

However, the difficulties can be explained in one of three ways. Perhaps the first view refers to liability for damages while the second refers to exemption from the city of asylum. Or, explaining both views with regard to asylum, the first view, that he is liable, refers to a case where the rung was worm-eaten (and there was negligence involved, therefore) while the second view, that he is exempt, refers to a case where the rung was not worm-eaten. Or, it could be said, the first view refers to a case where the rung was loose while the second refers to a case where the rung was fixed in place. Hence, the Gemara, by bringing in a tannaitic argument, defends both sides of the amoraic argument; for the parallel of the two different arguments holds.

CHAPTER II

B. MAKKOTH 7B-8A

The second Mishnah of this chapter, as we have it in our Talmud text, presents two different cases. In each of them, R. Judah Hanasi, referred to simply as, Rabbi, differs with the Sages over whether or not the manslayer involved must seek refuge in the city of asylum. Both cases involve a man chopping wood with an axe.

In the first case, while a man is chopping wood, the axe-head comes loose from the axe-helve, flies off, hits someone and kills him. In this case, Rabbi Judah Hanasi holds that the manslayer does not go into asylum, and the Sages hold that he does.

In the second case, while a man is chopping wood, the axe-head rebounds from the tree, (or, possibly, a chip flies off from the tree),¹ hits a man, and kills him. In this case, Rabbi Judah Hanasi holds that the manslayer goes into asylum, and the Sages hold that he does not.

The entire Gemara to this Mishnah presents an attempt to explain the differences between the views of Rabbi Judah Hanasi and the views of the Sages. In this sense, this Gemara is purely academic.

The Gemara opens with a Baraitha in which R. Judah

Hanasi addresses the Sages. This Baraitha gives us the basis for R. Judah Hanasi's position, founded upon two points of interpretation of a verse in Scripture. The verse is Deuteronomy 19:5: "When one shall come into a forest with his neighbor to cut trees, and he swings the axe to cut the tree, and the axe-head slips from the tree [or, from the axe handle] and hits his neighbor, that he dies, he shall flee to one of these cities and live."

To understand R. Judah Hanasi's position, however, we must first look at a clause of this verse in the original.

This clause reads, *והראש נפל מן העץ*, and, as indicated above, may be taken to mean either, "and the axe-head slips away from the tree, [or, wood, having both meanings]," or "and the axe-head slips away from the axe handle." Keeping this in mind, we will note in the Baraitha that R. Judah Hanasi understands this clause in the former sense, "from the tree."

R. Judah Hanasi's two points are as follows:

(1) The text reads, "and the axe-head slips away from the wood," and not "and the axe-head slips away from its wood." The implication of this point is that the word, "wood," means tree and not axe handle; (2) The context in which this clause appears dictates that the meaning of this clause is "and the axe-head slips away from the tree." Just as the word *עץ* means tree in the phrase, "to cut trees" and "to cut the tree," so does it mean tree in our debated clause. This type of analogy is

is called a heqqesh.

On the basis of R. Judah's understanding of this clause, the position he holds in the Mishnah seems clear: when the axe-head slips from the axe handle and causes death, no asylum is necessary; when the iron rebounds (or, alternately, a chip goes forth) from the tree being cut and causes death, the person swinging the axe must go to the city of asylum.

The next section of the Gemara presents the differences between R. Judah Hanasi and the Sages in another way. At the beginning of this section, R. Hiyya bar Ashi quoting Rav (Abba Areka, first generation Babylonian Amora) notes that R. Judah Hanasi and the Sages have, at the base of their positions, a different interpretation each of the same text, *וְהָאֵלֶּיךָ הָאֵלֶּיךָ*. R. Judah Hanasi, holding that the traditional unvocalized text is determinant for purposes of scriptural exposition, reads the word, *וְהָאֵלֶּיךָ*, as *וְהָאֵלֶּיךָ*², giving us, for the meaning of our clause, "and the axe-head was hurled away from the tree." The Sages, on the other hand, holding that the habitually read text is determinant for purposes of scriptural exposition, read the word, *וְהָאֵלֶּיךָ*, as *וְהָאֵלֶּיךָ*¹, giving us, for the meaning of our clause, "and the axe-head slipped away from the axe handle." (The meaning of the word, *עֵץ*, wood, follows, in this context, from the understanding of the word, *וְהָאֵלֶּיךָ*.)

The reasoning of R. Hiyya bar Ashi quoting Rav

is objected to on the grounds that R. Judah Hanasi does not hold that the traditional unvocalized text is determinant for purposes of scriptural exposition as R. Hiyya bar Ashi claims. The basis for this objection is a passage which the Gemara cites and which has its source in a passage found in Sanhedrin 4a, namely, "R. Judah Hanasi et. al. hold that the habitually read text is determinant." Hence, R. Hiyya bar Ashi quoting Rav is refuted. However, the Gemara goes on to say, since the Sages could make the claim that R. Hiyya bar Ashi quoting Rav attributes to them, and since R. Judah Hanasi on that basis would have a very weak argument indeed for his point, R. Judah Hanasi reinforces his position with the second argument that we find in the Baraitha at the outset of the Gemara.

The Gemara now gives a case, cited by R. Papa (fifth generation Babylonian Amora), which R. Papa claims illustrates the difference between R. Judah Hanasi and the Sages. The difference is illustrated by the way that each would rule in this case on the basis of their respective implications of their views. This is the case: a man throws a clod at a palm tree which knocks off a clump of dates which fall and kill a man.

R. Papa's point is objected to on the ground that it is obvious and teaches us nothing that we do not already know. Therefore, to counter this objection the Gemara shows that R. Papa's point is a necessary one;

and it indeed teaches us something new. One might suppose that this is an example of death occurring as a result of a secondary force. That is, one might think that R. Judah Hanasi would consider the clod as the primary force and the removal of dates as the secondary force (for purposes of illustration, let the clod take the place of the axe handle and the removal of dates the place of the axe-head which flips loose; this case is the first case of our Mishnah); and, in this case, R. Judah Hanasi would rule that the man would not have to go into exile. Therefore, R. Papa's point is necessary to teach that R. Judah Hanasi would consider this a case of primary force, the clod being analogous to the axe and the dates analogous to the chip from the tree (or the rebounding axe-head, the second case of our Mishnah); and he would rule that the manslayer has to go into exile.

The Gemara asks, pursuing the question of secondary forces, what in R. Judah Hanasi's scheme would constitute a secondary force. The answer is that R. Judah Hanasi would consider the following a case of secondary force causing death: a man throws a clod at a palm tree, and the clod strikes a twig. The twig, in turn, strikes a cluster of dates and knocks the cluster off the tree. In falling, the cluster hits a man and kills him.

For purposes of clarification, the following is a diagram of our Gemara:

I. (Baraita) The reasons behind R. Judah

Hanasi's position in the Mishnah:

A. "The woods" and not "its wood";

B. Context determine that the tree is meant.

II. (R. Hiyya bar Ashi quoting Rav) Both Judah

Hanasi and Sages interpret same text. But

A. Judah Hanasi: traditional unvocalized text determinant and, therefore, "was hurled away."

B. Sages: Habitually read text determinant and, therefore, "slipped."

III. Objection overruling II: Judah Hanasi holds habitually read text determinant.

A. Therefore Judah Hanasi enforces his argument with second point of Baraita (see IB above)

IV. (R. Papa) A case illustrating the differences between Judah Hanasi and Sages.

V. Objection: "Obvious"

VI. Objection countered: R. Papa's case necessarily stated to teach us that Judah Hanasi considers case one of primary force.

VII. What does Judah Hanasi consider secondary force?

A. Case showing secondary force

CHAPTER III

B. MAKKOTH 8A-8B

The intent of the Mishnah before us now is to continue what has gone before, and we still are dealing with the conditions that must be met in order for asylum to be either necessary or provided. In this Mishnah, three significant points are characterized which are pre-conditions to the making of asylum necessary. The first is that the death has to occur in a place to which both the manslayer and the person killed have the right of access. The second is that the person killed has to, be, at the time that the act that ultimately caused death commences, situated in such a location and position that he will be in the way of the death blow. That is, if the person killed puts himself in the way of the death blow, the manslayer does not have to go to the city of asylum. The third is that the act that the manslayer engages in at the time he delivers the inadvertent death blow must be a voluntary one. In other words, if the manslayer is engaged in an act of religious obligation and, as a result of it, inadvertently kills someone, he does not have to go into asylum. The Mishnah is divided into three parts, the first two of which state laws covering specific cases and the third of which derives general principles of law and gives specific

exclusions to the general principles. As it will be seen, however, the exclusions of the third section naturally follow from the intent of the principles.

The first section of the Mishnah deals with the case of a man who throws a stone into an area of public domain and thereby kills someone. Such a manslayer must go to the city of asylum. Upon this law R. Eliezer b. Jacob places a limitation: if the man who was killed was killed because he raised his head after the stone left the hand of the thrower and was thereby killed, the manslayer is exempt from going into asylum.

The second, in contrast to the first which dealt with the case of a man who threw a stone into a public domain, deals with the case of a man who throws a stone into an area which is his own private domain, exemplified in the Mishnah by a private courtyard. In this situation, the law provides for two possibilities: if the injured party had an express right of entry (such as if he had been invited to enter by the manslayer) into the manslayer's private domain, the manslayer must go to the city of asylum; on the other hand, if the injured party did not have an express right of entry, the manslayer does not have to go to the city of asylum.

The third section is based upon Deuteronomy 19:5, "And when a man goes into the forest with his neighbor to hew wood . . ." Two points of law are derived from this

biblical verse by analogy. The first point, which derives a principle of law under which the first two sections of the Mishnah are operating (we have here an example of common law), is this: just as the forest is a domain in which the right to free access is possessed by both the injured party and the injuring party, so in every domain where the injured party and the injuring party possess the right of free access does the law of asylum hold. In other words, it is expressly stated in Deuteronomy 19:5 that a man who kills another under the conditions described in this verse must go to the city of asylum in order to escape from the blood avenger. One of the conditions that must be met, according to this verse, is that the inadvertent killing must take place in a forest. However, to the Rabbis this forest is not to be taken only in its literal sense. Rather, it is a prototype for the law. The principle that is operative in the case of a forest, the fact of domain of free access to both parties, becomes a standard; and any place that meets this standard falls under the law. Therefore, the Mishnah goes on to say, excluded from the law is the case of death occurring in a private courtyard to which the injured party does not have right of free access. In such a case, the manslayer is not responsible.

The second derivation of this verse, which is not implied in the first two sections of the Mishnah,

is stated by Abba Saul (third generation Tanna): Just as the hewing of wood described in Deuteronomy 19:5 is a voluntary act, so must every act of manslaughter be a voluntary act (for the law of asylum to be operative). The philosophy behind this derivation is the same that we have in the previous derivation; the principle in effect in the case of hewing wood becomes the standard for the law. And therefore, the Mishnah continues, excluded from the law is an act of manslaughter arising out of these three cases: a father beating his son, a teacher chastising his pupil, and an agent of the court acting at the direction of the court to carry out the court's verdict. In these cases, the manslayer does not have to go into asylum, there being no liability for the manslaughter. It should be noted that all three of these cases are cases of religious obligation; and, since they are not therefore voluntary acts, they are outside the law of asylum.

The Gemara to this Mishnah is divided into three sections. The first section is devoted to argumentation centering around the initial assertion of our Mishnah: "If a man throws a stone into a public domain and kills someone therewith, the man must seek refuge [in the city of asylum]."

This section of our Gemara opens with an objection to the assertion of our Mishnah. The objection is this: a person who throws a stone into a public domain is a

wilful murderer. Therefore, the objection implies, how can the Mishnah assert that such an offender is granted the refuge of the city of asylum? Only a manslayer is given the protection of the city of asylum, and a wilful murderer is given no such protection from the blood avenger!

To counter this objection, the Gemara has to find a specific case wherein one who throws a stone into a public domain and kills someone therewith will be classified as a manslayer, i. e., as one who did indeed commit inadvertent homicide. By finding such a specific case, the Gemara will defeat the objection because it will then be found that the Mishnah has validity since there is a specific case to which the Mishnah applies.

The first case suggested is brought by R. Samuel b. Isaac (third generation Palestinian Amora). He claims that the Mishnah applies in a case where a man was tearing down a wall unto the public domain and a falling stone hit someone and caused death to result. But this case is shown to be invalid on the grounds that the man who tears down the wall has the responsibility of being careful; and, it is implied, if he is not careful, he is *ז'אנ* *ז'אנ*, one closely akin to a wilful murderer, who by the law is not afforded the protection of asylum.

The next case, to which it is suggested the Mishnah applies, is the case of a man tearing down a wall at night. To this case the same objection as the

one that rendered the previous case invalid is brought: the man tearing down the wall has to take precautions to ascertain that nobody is in the way. If he does not, he is classified as one closely akin to a wilful murderer. Hence, this suggestion does not hold.

Another possibility, to which an objection is raised, is the case of a man tearing down a wall unto a dung-heap. The objection raised is a two part objection: if people frequent the dung-heap, the man tearing down the wall unto it is a $\gamma \text{ v}^1 \text{ a}$, a wilful transgressor, and, as such, is not afforded the benefit of asylum; on the other hand, if people do not frequent the dung-pile, the man will think that it is perfectly in order and will fall in the category of $\text{o} \text{ l} \text{ j} \text{ k}$ to tear down the wall unto it, constrained, forced, a victim of mischance, who does not need the protection of the city of asylum (the death is in the category of "purely accidental" in this case). On this basis, this suggestion is also rendered unsatisfactory.

A case wherein the Mishnah holds, a modification of the previous case but where the objections brought to the previous case are invalid, cited by R. Papa, is the case where a man tears down a wall unto a dung-heap which is regularly used by people at night rather than during the day but to which someone occasionally comes and sits during the day. In this case, the man tearing down the wall is not a wilful transgressor because people

do not regularly use the dung-hill during the day, nor a victim of mischance because someone occasionally uses the dung-hill during the day; and the man who while tearing down the wall inadvertently kills a person must go into asylum. Therefore, the Mishnah is defended, and the objection to the Mishnah does not stand because a case which would be classified manslaughter has been brought which falls under the scope of the Mishnah.

The second section of the Gemara is a discussion of R. Eliezer b. Jacob's limitation: "If the one who was hit by the stone had lifted his head after the stone left the hand of the thrower and was killed thereby, the thrower is exempt from asylum."

This section opens a well-known Baraitha that informs us of the source of this limitation. The Baraitha, based upon a phrase of Deuteronomy 19:5, "כִּשְׁנִי מֵרֵשׁוֹתָיו", "that it [the axe-head] found [hit] his neighbor . . ." By taking the word "כִּשְׁנִי", "that it found," literally, the Baraitha states that excluded from the category of one who must go to the city of asylum is the injurer of a victim who put himself in the way of the missile. On the basis of this Baraitha, the Gemara informs us, R. Eliezer b. Jacob stated his limitation that we find in the Mishnah.

The Gemara considers the logic behind the Baraitha by means of a question that it asks and that leads to an objection to the Baraitha. The question is this: does

the Baraitha mean that the word "*לִבְנִי*," "that it found," is to be understood in the sense that, in order for the law of manslaughter to hold, the victim had to have been found at the location he was struck ab initio? Implied by the Gemara is an affirmative answer, that such is the meaning of *לִבְנִי*, found ab initio.

This gives the Gemara an opportunity to raise an objection from an equivalent source, another Baraitha, in which the word *לִבְנִי* has precisely the opposite meaning, not found ab initio. We read in Leviticus 25:25f, "If your brother is in straits and has to sell part of his holding, his nearest redeemer shall come and redeem what his brother has sold. If a man has no one to redeem for him [*וְאִם לֹא יִהְיֶה לוֹ יוֹדֵעַ* *לִבְנִי* *וְהָיָה עָשִׂיר*] and he prospers and finds the means to redeem, he shall compute the years since its sale, refund the difference to the man to whom he sold it, and return to his holding." This Baraitha brought in to contradict the first Baraitha states, *לִבְנִי* excludes that which was with him originally, namely, he shall not sell a distant piece of property to redeem the piece near that he was forced to sell nor a bad piece of property to redeem the choice piece he had to sell.

Rabba resolves the conflict by stating that each use of *לִבְנִי* must be taken in its own context and has no bearing upon the other. When, in the Leviticus 25:25f passage, when we take "*לִבְנִי*" together with "*וְהָיָה עָשִׂיר*", "and he prospers," we can say that just as "and he prospers"

means that which he attains now, so does "and he finds [the means to redeem it]" mean now. On the other hand, when, in the Deuteronomy 19:5 passage we take *k3N1* together with "forest," we say that just as the forest is a thing which must be present ab initio, so must *k3N1* imply something which already was there ab initio.

The third section of the Gemara is divided into two subsections. The first subsection considers a statement of the Mishnah: "Abba Saul says, just as hewing wood is a voluntary act, so must every act [for asylum to be either necessary or provided] be a voluntary act."

This subsection opens with an objection raised against the Mishnah. In the objection, an attempt is made to find a case of religious obligation, which would be a non-voluntary act, as a result of which an inadvertent homicide occurred and for which it will be suggested that asylum is prescribed. This would show Abba Saul wrong because he stated the manslaughter must be a result of a voluntary act for asylum to be necessary or provided. The objection, made by one of the Rabbis to Rabba, is this: what is Abba Saul's ground for saying that the cutting of wood was a voluntary act in the first place? (This is a challenge to Abba Saul's fundamental assumption.) Perhaps it was cutting wood for a sukkah or for the pile of wood on the altar of the Temple, either of which is seemingly an act of religious obligation; but, when a manslaughter occurred

as a result of its performance, Scripture nevertheless decreed that asylum is necessary.

Rabba counters this objection on this ground: if one finds already-cut wood, there is no religious obligation to cut wood. Similarly, in the cases cited, there is no religious obligation to cut wood; rather, the religious obligation is the building of the sukkah or the bringing of the altar wood. The implication of this statement of Rabba is that no case has been brought which proves that Abba Saul's assumption is incorrect.

Rabbina challenges Rabba from a higher source, the previous Mishnah: " Excluded from the law of asylum is the father who strikes his son, the teacher who chastises the pupil, and the agent of the court (administering the sentence of the court)." Now, reasoning according to Rabba's line of thought, Rabbina says since if the son is learned it is not a religious obligation to strike him, then even in the first instance it should not be considered a part of the prescribed command. This is a reductio ad absurdum of Rabba's argument, for on this basis, the father, teacher, or agent of the court should have to go into asylum, and this is in direct opposition to the previous Mishnah which said that such people did not have to go into exile because they were involved in the performance of a religious obligation at the time that the manslaughter occurred.

Rabba counters, destroying Rabbina's basic premise.

Even when a son is already learned, it is still a religious obligation to strike the son. The basis for this assertion is Proverbs 29:17, "Chastise thy son and he will give thee rest; he will give delight to thy soul." Hence, it is shown, that Rabba's original counter to the objection of one of the Rabbis still stands.

However, Rabba now states that he had a better retort to make to the original objection to Abba Saul. From the text of Deuteronomy 19:5, he could have answered the objection in this way: "When a man goes into the forest with his neighbor," speaks of a voluntary act. That is, if he wishes, he goes into the forest or, if he does not wish, he does not. Now, if "to hew wood" is a reference to obligatory hewing, could he not go into the forest? Therefore, if it were not a voluntary act of hewing, as it has to be, there would be no exile, thus countering the original challenge to Abba Saul.

R. Adda bar Ahava (fourth generation Babylonian Amora) now asks Rabba a question leading to an attempted refutation of his position: does $\gamma\lambda\kappa$, when, as in "when a man goes into a forest with his neighbor," always imply an optional action? If so, let us consider this: does the scriptural law of Numbers 19:20, $\kappa\delta\iota\ \kappa\alpha\tau\alpha\ \gamma\epsilon\lambda\iota\ \kappa\epsilon\tau\alpha\ \gamma\epsilon\lambda\iota$, "When one defiles himself and does not cleanse himself, he shall be cut off from the congregation," apply only in the case where if the man wishes he defile himself (by touching the corpse) but where he does

not want to he does not (i. e., in the case of voluntary defilement; while in the case of mandatory defilement--i. e., of an unknown stranger found dead on the road--it was the duty of the finder, even if the High Priest, to attend to the burial unless there was another person there to act for him),¹ where it is not possible that he does not defile himself, he is exempt from punishment? Obviously not! This is a reductio ad absurdum of Rabba's argument.

Rabba counters by saying that the two situations are not parallel; and, therefore, the reductio ad absurdum does not hold. In the case of defilement, Scripture, in Numbers 19:13, says *וְהָיָה כִּי יִשָּׁע*, "he shall be defiled," which means that in any case, either voluntary or involuntary defilement, the law holds. The implication of this is that in the case of the man going into the forest, no such stipulation is anywhere made for an involuntary going into the forest, so no claim as yet can be made that asylum is necessary for an involuntary act.

R. Adda bar Ahava now attempts to refute Rabba on the grounds that the phrase, *וְהָיָה כִּי יִשָּׁע*, "he shall be defiled," has already been used for another deduction and cannot, therefore, mean, as Rabba suggests, "in any case." The deduction for which it has already been claimed is this, cited in a Baraitha: *וְהָיָה כִּי יִשָּׁע*, "he shall be defiled," includes defiled persons who took their

ablution during the daytime (defilement ceased only with sunset²); *לְבַלְלָהּ בַּיּוֹם*, "his defilement is yet upon him," of Numbers 19:3 includes those still short of the atonement rite. In cases of defilements which need a sacrifice and ablution, if the sun had set and the defiled had not brought atonement but had entered the Sanctuary, they are liable to extirpation.³

In order to counter R. Adda bar Ahava's attempted refutation, Rabba, if he is to claim *לְבַלְלָהּ בַּיּוֹם* for the deduction he does, must now show that he can derive the two points of the Baraitha from *לְבַלְלָהּ בַּיּוֹם*. He does on the ground that the word *בַּיּוֹם* in this passage is *אֶתְּמַרְתָּ*, a superfluous word in Scripture. Therefore, he, Rabba, uses the word, *בַּיּוֹם*, to derive the first point of the Baraitha and the words, *לְבַלְלָהּ בַּיּוֹם*, to derive the second. Therefore, all the objections to Rabba have been removed, and his answer to the Rabbis stands.

In the second subsection of the section of the Gemara, a totally different subject of discussion is considered. It is considered at this point because some of the above discussion forms a part of the new subject of discussion as a step or series of steps in the argumentation. This new discussion further follows the form of the beginning of the previous discussion, thus giving it a legitimate right to be inserted here. It is introduced through the device, *אֵיכָּא זַמְנָא דְּהָא אֲמַר*, which means, there are those who teach [some of the above

subject matter] in conjunction with the following [discussion].

Considering Exodus 34:21, "Six days shall you work, but on the seventh day you shall keep the Sabbath; in ploughing time and in harvest you shall rest," R. Akiba (second generation Tanna) states that the injunction against ploughing and harvesting does not refer to ploughing and harvesting of the Sabbatical year which is prohibited in Leviticus 25:4f. Rather, Exodus 34:21 is an injunction prohibiting ploughing in the pre-Sabbatical year where the produce would come up in the Sabbatical year and an injunction prohibiting harvesting in the post-Sabbatical year which was partly grown in the Sabbatical year. R. Yishmael adds that just as ploughing is an optional act, harvesting is only forbidden when it is an optional act. Therefore, outside the law is the harvesting of the *אחרי*, the first barley, which is a religious obligation.

R. Yishmael is challenged as one of the Rabbis asks Rabba, "What is R. Yishmael's ground for saying that the ploughing referred to is an optional act in the first place (challenging his fundamental assumption)?" Perhaps the ploughing meant was the ploughing for the *אחרי* barley, a seeming act of religious obligation, but about which Scripture nevertheless decreed he must rest anyway on the Sabbath (in contrast to the cutting of the *אחרי*, which is allowed even on the Sabbath).

Rabba counters the objection on this ground: if one finds an already ploughed field, he does not have to plow again. Hence, the ploughing referred to is not an act of religious obligation.

Rabbina, in attempted refutation, states the identical objection that he made against Rabba in the first subsection of this part of the Gemara,⁴ and Rabba counters with the identical argument that he used then as well.⁵ Rabba's contention, then that the ploughing referred to is not an act of religious obligation, still stands.

Rabba, however, to conclude this section, goes on to present a better refutation of the Rabbi's claim. It is this: one can say that harvesting is analogous to ploughing. Just as in the case of ploughing, if one finds an already ploughed field he does not have to plough, so, too, in the case of harvesting, if one finds already cut sheaves he does not have to cut again. Now, if the harvesting referred to in Exodus 34:21 is a ritually obligatory harvesting, can it be said that if one finds already cut sheaves he does not have to cut again? Obviously not, for one is commanded in Leviticus 23:10 to bring as well as cut the sheaves. Hence, R. Yishmael is upheld, and the challenge of the Rabbis to Rabba does not hold.

CHAPTER IV

B. MAKKOTH 8B-9B

The scope of the Mishnah now before us comprises a consideration of what the relationship of the man-slaughterer to the slain must be in order for the man-slayer to be obliged to seek asylum. Three different groups of relationships are considered in this Mishnah.

The first law of the Mishnah states the following: "A father [must] seek asylum for [inadvertently killing] his son, and a son [must] seek asylum for [inadvertently killing] his father." The second states, "All [must] seek asylum for [inadvertently killing] an Israelite, and an Israelite must seek asylum on their account for a sojourning stranger." The third states, "And a sojourning stranger [must] seek asylum for [inadvertently killing] a sojourning stranger." The term, "sojourning stranger," which in Hebrew is *גֵּר תָּמִיד*, denotes a non-Jewish resident who, living within the Jewish community, abstains from the practice of idolatry, a quasi-convert.

The Gemara to this Mishnah is divided into four sections. The first section is based upon the first half of the first section of our Mishnah, "A father [must] seek asylum for [inadvertently killing] his son."

This section opens with an objection as the Gemara points up a statement of the previous Mishnah which, seemingly, is in contradiction to the passage before us for consideration. The statement of the previous Mishnah is this: "Excluded from the law of banishment is the father who, while beating his son, [inadvertently kills the son]." Since two Mishnahs cannot contradict each other as such, it will be shown that they each refer to something different from the other and, therefore, since they speak of different things, do not conflict. The thought behind our Mishnah differs from the thought behind the conflicting Mishnah.

To answer the challenge to our Mishnah, the Gemara responds that our Mishnah refers to the case where a father beats a son who is already learned and inadvertently kills him. In this case, the Gemara suggests, the father must go into asylum because, ~~since the son~~ is already learned, he, in beating the son, is not fulfilling a religious obligation (which was the reason, in the previous Mishnah, that the case of the father beating his son was excluded from the category of voluntary acts which were prerequisites to having to seek asylum for committing manslaughter). This would put the case described in our Mishnah into the category of voluntary acts which are not outside the law of asylum.

An objection is raised against this answer, as the Gemara of our Mishnah makes reference to the Gemara of the

previous Mishnah where we learned that a father is under a religious obligation to chastise his son even though he is already learned. This makes the first answer unacceptable, and the conflict between the two Mishnahs is still in force.

Therefore, the Gemara again responds to the challenge, saying that our Mishnah refers to a case where the father inadvertently kills his son while teaching him while the son is in the role of being a carpenter's apprentice. The implication of this answer is that this is a case where there the father is performing a voluntary act. In such a case, then, the father is liable to asylum.

Again an objection is raised: in teaching the son while the son is in the role of carpenter's apprentice, the father is teaching the son a livelihood. This, too, is a religious obligation as we learn in Qiddushin 30b that a father is under religious obligation to teach his son a livelihood. The original conflict is still in force.

The Gemara finally resolves the conflict by citing a case where the father is not under religious obligation to beat his son. This is the case where the father teaches his son in the role of carpenter's apprentice at a time when the son had already learned another trade. Here the father is not performing an act of religious obligation. Now, since a case where the father is

not under religious obligation to beat his son has been found, an instance is presented in which the father, if he inadvertently kills his son, falls under the category of one who commits manslaughter while performing a voluntary act. In this case a father must indeed seek asylum for killing his son, and the conflict is resolved.

In the second section of our Gemara, we consider the second half of the first law of the Mishnah, "and a son [must] seek asylum for [inadvertently killing] his father." This section opens with an objection to the statement under consideration from a Baraitha which holds that the phrase, "he who kills a man in error," of Numbers 35:11, excludes from the city of asylum one who kills his father. This Baraitha is in direct contradiction to the statement of our Mishnah. While our Mishnah holds that a son must go to the city of asylum for the manslaughter of his father, the Baraitha holds that a son who kills his father, under any circumstances, may never be afforded asylum. While in the previous section of our Gemara the conflict of our Mishnah with another was resolved by showing that our Mishnah referred to one case and the other Mishnah referred to another, this present conflict is resolved in a different manner by Rav Kahana.

This conflict is resolved by showing that the Baraitha represents the view of R. Simon and the Mishnah the view of the Rabbis. When two tannaitic sources are nothing more than one person's view against another's;

the conflict is resolved in that both views are allowed to stand.

That which stands behind both views is a principle of law that we find in Sanhedrin 81a, namely, when a person commits two capital crimes he is punished for the graver of the two offenses. Which of the two is the graver of the offenses is determined by the method of execution prescribed for each, the more severe the means of punishment, the graver the offense is considered. The two methods of execution that concern us in this argument are execution by the sword and execution by strangulation.

When one kills his parent, he, in essence, commits two capital crimes, killing a parent and wounding a parent. The former is punishable by means of execution by the sword, and the latter is punishable by means of execution by strangulation.

Returning to Rav Kahana's resolution of our conflict, R. Simon holds that the penalty of execution by strangulation is more severe than execution by the sword. Therefore, according to R. Simon's position, in a case of a son inadvertently killing his parent, the son is punished for that capital crime for which execution by strangulation is the prescribed penalty, namely, the crime of wounding a parent. Since Scripture prescribes atonement through asylum only for inadvertent killing and not for inadvertent wounding, and since the son, according to R. Simon's position is punished for inadvertently wounding

his parent, we have the view of the Baraitha, that is, that a son who kills his father may not have refuge in the city of asylum.

The Rabbis, on the other hand, hold that the penalty of execution by the sword is more severe than execution by strangulation, and the son is punished for that capital crime for which execution by the sword is the prescribed penalty, namely, the crime of killing one's parent. Therefore, when one inadvertently kills his father, he must go to the city of asylum, as the Mishnah asserts, since Scripture provided asylum for one who inadvertently kills another human being. Thus the conflict is resolved.

A statement of Rabba is added to the end of this section, and it comes as an amplification of R. Simon's position. Rabba holds that the statement, "One who inadvertently kills another human being," of Numbers 35:11, excludes from the refuge of asylum one who only wounds his father. The reason that this must be explicitly stated is that one might think that since if one intentionally wounds his father he incurs the death penalty, in the case that one inadvertently wounds his father he should be allowed the refuge of the city of asylum. Therefore, Rabba's statement is made to show that one who inadvertently wounds his father is not granted the refuge of the city of asylum but must, rather, pay the death penalty.

The third section of the Gemara considers all but the end of the second law of the Mishnah: "All [must] seek asylum for [inadvertently killing] an Israelite, and an Israelite must seek asylum on their account." This section of the Gemara is divided into two subsections. The first section is a clarification of the ambiguous term, "All," of the statement of this section of our Mishnah. The term, "All," is limited to mean a slave and a Cuthean.

The second subsection of this part of our Gemara begins with the technical term, *כאן נאמר*, which means, what we read in the Mishnah has reference to that which the Rabbis taught; and the meaning that the term connotes is that the Mishnah before us supports the following Baraitha, thus making it authoritative.¹

The Baraitha that opens the discussion of this section is as follows: "A slave or a Cuthean must seek asylum or is flogged on account of an Israelite, and an Israelite must seek asylum or is flogged on account of a slave or a Cuthean." The Gemara first notes that it is clear why a slave or a Cuthean must seek asylum or is flogged on account of an Israelite. A slave or a Cuthean must seek asylum in the case of inadvertently killing an Israelite, and a slave or a Cuthean is flogged in the case of cursing an Israelite in the Divine name.

The Gemara then states, however, that only half of the reverse situation is clear. It is self-evident

that an Israelite must seek asylum in the case that he inadvertently kills a slave or a Cuthean. But why--and this becomes the new subject of discussion--is an Israelite flogged on account of a slave or a Cuthean? The first proposed answer is that an Israelite is flogged on account of a slave or a Cuthean in the case that he curses the slave or Cuthean.

This is objected to on Scriptural grounds. The verse making cursing an offense is Exodus 22:27, "You shall not curse a ruler of your people." In this verse, however, the word, "ruler," is limited to one who acts according to the ways of the people, Israel, which clearly, neither a slave nor a Cuthean does. Therefore, this proposed answer is invalidated.

The second proposed answer, made by Aha bar Jacob (fourth generation Babylonian Amora), is that an Israelite is flogged on account of a slave or a Cuthean in the case that an Israelite testifies against the slave (or Cuthean) that he be guilty of a crime punishable by flogging and is proven to be a perjurer (thus making the Israelite liable to flogging), corresponding to where a slave testifies against the Israelite that he is guilty of a crime punishable by stripes and is proven to be a perjurer (thus making the slave liable to flogging).

This second proposed answer is objected to--the objection is stated as a question--on the grounds that a slave cannot give testimony. Therefore, the analogy

cannot hold up; and the second proposed answer is invalidated.

The final answer, given by R. Aha the son of R. Ika, is this: an Israelite is flogged on account of a slave or a Cuthean when the Israelite hits the slave or Cuthean and inflicts less than a perutah worth of damages (in the case that the Israelite inflicts damages worth more than a perutah, he pays only the damages and is not flogged). The proof for this position comes from a statement of R. Ammi (b. Nathan, third generation Palestinian Amora) quoting R. Yohanan who held that one who strikes a wounding blow and inflicts damages less than the worth of a perutah is flogged. Further, the Gemara informs us, we do not draw an analogy between wounding a slave or a Cuthean, an act for which the Israelite can receive stripes, and cursing a slave or a Cuthean, an act for which the Israelite cannot receive stripes. (Such an analogy would be as follows: just as an Israelite cannot receive stripes for cursing a slave or a Cuthean, so he cannot receive stripes for wounding a slave or a Cuthean. The Gemara informs us that this analogy is invalid.)

The fourth section of our Gemara is a consideration of the last phrase of the second part of our Mishnah, "except for a sojourning stranger." The implication of this phrase is that from both categories of the Mishnah sentence, to which this phrase is appended, the sojourning

stranger is excluded. That is to say, the sojourning stranger is not afforded the protection of the city of asylum for an act of inadvertently killing an Israelite. Rather, the sojourning stranger, as a punishment for such an act, is put to death. Similarly, an Israelite does not have to have the protection of asylum in the case that he inadvertently kills a sojourning stranger. Rather, he goes free entirely.

The Gemara opens with an argument arising from an apparent contradiction in the Mishnah. From the phrase, "except for a sojourning stranger," the Gemara makes this deduction: since the Israelite slayer does not have to seek asylum as he would for inadvertently slaying another Israelite and since a heathen is not afforded the protection of asylum,² we can say that the consequence of the phrase, "except for a sojourning stranger," is that the sojourning stranger is treated, with respect to the law of asylum, as a heathen. In other words, the law of asylum, in the case involving an Israelite who inadvertently kills a sojourning stranger or vice-verse, does not hold.

Against this view is held the last clause of the Mishnah which states, "The sojourning stranger [is allowed to] seek asylum for [inadvertently killing] a sojourning stranger." Contrary to the law under consideration, in the case of the last clause of the Mishnah, the law of asylum does hold. Hence, a contradiction

arises with the law under consideration.

Rav Kahana resolves the conflict by saying that each law refers to a different case. The last clause of the Mishnah, where the law of asylum does apparently hold for the sojourning stranger, covers the case of a sojourning stranger who killed another sojourning stranger. The law under consideration, "Except for a sojourning stranger," on the other hand, where the law of asylum apparently does not hold for the sojourning stranger, covers the case where a sojourning stranger killed an Israelite. On this basis of this resolution by Rav Kahana, then, we can say that a sojourning stranger is afforded the protection of asylum only when he has inadvertently killed another sojourning stranger.

The Gemara then presents an argument parallel to the last argument. In this new argument, however, Scriptural verses replace parts of the Mishnah. In Numbers 35:15, we read, "For the children of Israel and for the stranger and for the sojourner there shall be these six cities of refuge." In Numbers 35:12, we read, "The cities shall be unto you for refuge from the avenger." The implication of Numbers 35:15 is that the sojourning stranger comes under the scope of the law of asylum. The implication of Numbers 35:12, however, is that only to an Israelite does the law of asylum apply while a sojourning stranger is excluded

from the law since, in this verse, the sojourning stranger is not mentioned. Hence, the two verses conflict.

Rav Kahana resolves the conflict in the same way that he did in the previous argument. Each verse covers a different case. Under Numbers 35:12 falls the case of a sojourning stranger who inadvertently kills an Israelite; in this case, as the verse implies, the sojourning stranger is not afforded the protection of asylum. Under Numbers 35:15, on the other hand, falls the case of the sojourning stranger who inadvertently kills another sojourning stranger; in this case, as the verse implies, the sojourning stranger is afforded the protection of asylum.

Rav Kahana's resolution is challenged from an equivalent source, the interpretation of an anonymous Baraitha. The Baraitha reads as follows: "Consequently, stranger and heathen who killed are killed." The interpretation of this is that just as a heathen is put to death whether he kills another heathen or a non-heathen, so a sojourner stranger is put to death whether he kills another sojourning stranger or a non-sojourning stranger. While Rav Kahana maintained that Numbers 35:15 stated that the sojourning stranger was afforded the protection of asylum in the case that he killed another sojourning stranger, the objection holds that the sojourning stranger is never afforded the protection of asylum.

R. Hisda (third generation Babylonian Amora) therefore offers a different resolution to the conflict between Numbers 35:12 and Numbers 35:15. He states that Numbers 35:15 covers the case where death comes as a result of a downward blow, and Numbers 35:12 covers the case where death comes as a result of an upward blow. In the case where death is a result of a downward motion, as an Israelite goes into asylum³ so a sojourning stranger goes into asylum. In the case of a death resulting from an upward motion, however, where an Israelite is exempt from having to seek asylum, the sojourning stranger is put to death.

Rabba then objects to the logic put forth by R. Hisda as Rabba claims that the a fortiori argument should have a contrary solution: in the case of a death resulting from an upward motion, where an Israelite is exempt from having to seek asylum, the sojourning stranger-- if we argue R. Hisda's a fortiori argument to its logical conclusion--should likewise be exempt from having to seek asylum.

Rabba, then, by explaining the ground for the severity of the original objection to Rav Kahana, resolves the conflict between the resolution of Rav Kahana and the objection to it. The Baraitha refers only to a case where a sojourning stranger is under the misapprehension that killing is permissible (in this case he is never afforded the protection of asylum) and is always,

therefore, liable to death for any killing.

To this Abaye objects, saying that one who thinks that killing is permissible is a victim of mischance, is forced, and, therefore, should not be killed. Rabba counters saying that he holds one who thinks killing is permissible to be in the category on one closely akin to a wilful murderer and who should, therefore, be held liable to the death penalty. This is a reiteration of an argument found above.⁴

The Gemara now moves to an argument tangential to the previous discussion, and it stems from the Abaye-Rabba controversy. The purpose of this tangential argument is to show that the previous controversy is consistent with opinions elsewhere expressed and that the disputants of the previous controversy differ each following his own principle. The sign of the tangential argument is the phrase, *לפי דעתו* / *לפי דעתו*, meaning, they follow after their principle. This tangential argument opens with the word, *אמר*, it is said, and is therefore an amoraic section.

The point of dispute is the case of a man who thought he was killing a beast but the victim turned out to be a man, or who thought he was killing a heathen but the victim turned out to be a sojourning stranger. Rabba holds that such a man is liable because he holds one who thinks killing permissible to be closely akin to a wilful murderer (Since the attack was intentional, with intent to harm ab initio, the man should have been more

careful).⁵ R. Hisda holds that such a man is exempt because he holds one who thinks that killing is permissible to be a victim of mischance.

Rabba then raises an objection to R. Hisda from a higher source, as the discussion now turns to a consideration of the Biblical narrative of Abimelech taking Sarah. We read in Genesis 20:3, that God says to Abimelech, "Behold you are going to die on account of the woman you have taken," implying liability to human execution. This shows Rabba's view. Abimelech, in taking Sarah, represents one who thinks taking another man's wife is permissible; the text, however, shows Abimelech to be closely akin to a wilful offender since, the text says, he will die for his act.

R. Hisda counters Rabba's objection, and he claims that the text of this Biblical narrative implies liability not to human execution but to Divine displeasure. For we read, in Genesis 20:6, "Since you did this while being pure of heart," i. e., since you thought that the act was permissible, "I have withheld you from sinning" (emphatically stated). This shows R. Hisda's view. Abimelech, in taking Sarah, represents one who thinks taking another man's wife is permissible; the text, however, shows Abimelech to be only a victim of mischance since, as the text shows, he will not die for his act because God did not let him commit the transgression.

Rabba attempts to refute R. Hisda by applying his

reasoning to another verse and showing it to be faulty. We read in Genesis 39:9 that Joseph says to Potiphar, "How can I do this great wickedness and sin against God?" By R. Hisda's reasoning, says Rabba, the reference would be only to a sin against God and not against man for which Joseph would not be punished. Rabba maintains, however, that the punishment would be transmitted to human authority as it would be meted out, no doubt, in Joseph's having to pay the penalty for seducing Potiphar's wife. Similarly, in Genesis 20:3, Rabba claims, punishment is left to human agency to carry out. On this basis, one who thinks that taking another's wife is permissible is demonstrated to be closely akin to a wilful offender, which is Rabba's position.

R. Hisda then raises another objection to Rabba from a higher authority. We read in Genesis 20:4 that Abimelech says to God, "Will you slay a righteous nation?" This implies, according to R. Hisda, that the belief that the offense is permissible is a ground for exoneration.⁶

Rabba, however, counters R. Hisda's objection with another verse from the narrative, Genesis 20:7, where God answers Abimelech, "And now, return the man's wife [to him], for he is a prophet." This implies, according to Rabba, that God does not acknowledge his word and answers him that he is liable to the death penalty since he is not righteous in the matter.⁷

The Gemara next asks a rhetorical question that

leads, ultimately to the conclusion of the controversy. The question is this: "Is the reason that [Sarah] must be returned the fact that she is the wife of a prophet?". In other words, had she not been the wife of a prophet would she not have to be returned? The implied answer to this question, of course, is that the reverse is the case, as stated by Samuel bar Nahmani. (third generation Palestinian Amora), who holds that "and now restore the man's wife," of Genesis 20:7 means that Abimelech is bid to return Sarah to Abraham in any case. Further, he states, concerning that which Abimelech asks in Genesis 20:4f, "Will you slay a righteous nation? Did he [Abraham] not say to me, 'She is my sister'?", the answer is, "He is a prophet," that is, Abraham knew what answers to give to Abimelech. The principle involved here is that when a lodger comes to a city, he is asked about his food and drink and not whether the woman with him is his wife. Implied in this narrative is that Abimelech should have ascertained that Sarah was Abraham's wife and did not; therefore, he is liable to punishment. Thus, Rabba is upheld.

The Gemara then applies this all to the original assertion of Rabba in the Rabba-Abaye controversy and rules in favor of Rabba: a sojourning stranger, called here a Noahite, one who abstains from idolatry and who practices the seven Noahite laws, who commits a crime under misapprehension is put to death because he is responsible for learning the facts even if he does not.

Because Rabba's explanation of the interpretation of the Baraitha that was held against Rav Kahana is upheld, the conflict between Rav Kahana and the Baraitha with its interpretation no longer stands. Each side refers to a different case.

We conclude this chapter by reading the Mishnah in light of the Gemara as we now note how the Mishnah has been changed:: "A father [must] seek asylum for [inadvertently killing] his son while teaching him a second trade after the son had already learned a trade; and, according to the view of the Rabbis, a son is afforded the protection of asylum for [inadvertently killing] his father. A slave or a Cuthean [must] seek asylum for [inadvertently killing] an Israelite, and an Israelite must seek asylum on their account. A sojourning stranger is not allowed the protection of asylum for [inadvertently killing] an Israelite, and an Israelite is exempt from asylum in a case where he [inadvertently kills] a sojourning stranger. A sojourning stranger is allowed the protection of asylum only in the case that he inadvertently kills another sojourning stranger and further only if he has full knowledge that killing is not permissible."

CHAPTER V

B. MAKKOTH 9B

In the Mishnah to this section of Talmud, we consider the last two of the special categories of manslaughterers, the blind man and the enemy. Each category of manslayer is considered separately in the Mishnah which is, consequently, divided into two parts.

In the first part, the case of the blind manslaughterer's liability to asylum is considered. Two opposing views are stated, R. Judah (bar El'ai, second generation Tanna) holding that a blind man who inadvertently kills does not have to seek asylum and R. Me'ir (third generation Tanna) holding that he does .

In the second part, the case of the enemy's being granted asylum in the case that he inadvertently kills the person whose enemy he is, is considered. The Mishnah first presents the anonymous position: the enemy is not allowed the protection of asylum. Following this we find an even more stringent approach to the situation, the view of R. Jose who holds that an enemy who seemingly inadvertently kills the person whose enemy he is is put to death because he stands as one forewarned. (Since the enemy is hostile, he virtually stands before the world as already forewarned; and we

assume, according to R. Jose's position, that he is out to kill the person whom he hates, thus putting the enemy in the category of wilful murderer.)

R. Simeon's (b. Yohai, third generation Tanna) position, a partial dissent from the anonymous position of the Mishnah, concluded the Mishnah: "there are times when the enemy is afforded the protection of asylum and times when he is not, the determining rule being whenever it can be ascertained that [the enemy] wilfully killed he is not afforded the protection of asylum and [whenever it can be ascertained that] he inadvertently killed he is afforded the protection of asylum."

The Gemara to our Mishnah contains three sections. In the first section, the Gemara seeks to discover the reasoning behind the respective position of R. Judah and R. Me'ir regarding the blind manslayer's liability to asylum as found in the first section of our Mishnah.

The Gemara opens with a (well-known) Baraitha in which it becomes apparent that the respective positions of the part of the Mishnah that we are now considering follow from each side's use of the phrase "without seeing" of Numbers 35:23, a phrase giving one of the seeming conditions to being granted asylum that are a part of the section on manslaughter found in Numbers 35:22-28. R. Judah holds that the phrase "without seeing" excludes the blind man from having to seek asylum; R. Me'ir holds that the phrase, "without seeing" brings the blind

manslayer under the obligation to seek asylum. According to Rashi, R. Judah's position hinges on the phrase "without seeing" having in this context the meaning that the man, while he killed without seeing, must be able to see elsewhere; hence the blind man is excluded from the law because he cannot see elsewhere as he cannot see while he inadvertently kills.¹

The Gemara proceed to show how R. Judah and R. Me'ir arrive at their positions concerning the phrase, "without seeing." R. Judah arrives at his understanding of the use of "without seeing" as an exclusion in this way: since, in Deuteronomy 19:5 we read, "when a man goes into a forest with his neighbor to hew wood . . . " we infer that even a blind man going into the forest comes under the law. However, when we read elsewhere "without seeing" this phrase "without seeing" limits the law to have as an exclusion the blind man.

On the other hand, R. Me'ir, noting that in Deuteronomy 19:4 we have as an exclusion from the law of the intentional murderer based upon the phrase, "without knowing," states that if "without seeing" is an exclusion and "without knowing" is an exclusion, then this is a case of exclusion following exclusion which is equal to an inclusion into the law. Hence, R. Me'ir includes the blind manslayer under the law. The talmudic rule of two exclusions being the equivalent of an inclusion, invoked here by R. Me'ir, was originally used in

in situations where the logic was always invalid. As time passed, however, the rule rather than the logic became the important thing, and the rule gained acceptance as a legitimate device for talmudic exegesis whether the logic was valid or not.

The second section of the Gemara to our Mishnah is centered around an explanation and an expansion of R. Jose's position which the Gemara, in its opening remark, challenges on the ground that the enemy should not be put to death unless he is specifically warned not to kill. In a murder case, this warning before the murder is committed is a necessary prerequisite to a conviction.

The Gemara answers the challenge by stating that the section of the Mishnah under consideration is only the view of R. Jose b. Judah (fourth generation Tanna) following logically from it. We learn R. Jose b. Judah's position from a Baraitha: "A scholar does not need to be warned [he can be convicted of murder even if there was no warning] because the only purpose of warning is to discern between inadvertent killing and wilful murder." Since the assumption is that an enemy will only kill wilfully, no warning is needed; and the challenge to R. Jose's position as found in the Mishnah is answered.

The last section of the Gemara to our Mishnah is a discussion of the position of R. Simeon. The Gemara opens by asking for a specific case which would illustrate R. Simeon's determining rule, "whenever it can be ascer-

tained that [the enemy] wilfully killed he is not afforded the protection of asylum and [whenever it can be ascertained that] he inadvertently killed he is afforded the protection of asylum."

The case provided is the case where the enemy lowers a cask. In this cask, if the rope snaps--thereby causing the cask to fall and kill the person whose enemy he is--the killer is given the protection of asylum (since it cannot be said in this case that the killing took place with malice aforethought²). On the other hand, if the rope slips--thereby causing the cask to fall and kill the person whose enemy he is--the man is not given the protection of asylum (because it can be said that the killing took place with malice aforethought³).

This is objected to (as is the Mishnah therefore objected to) on the ground that it is inconsistent with R. Simeon's position as stated elsewhere in a Baraitha: "R. Simeon says that a man never goes into asylum unless the [rope of the] windlass apparatus slips [*italics mine*] from his hand." The implication of the Baraitha is that if the rope snaps there is no provision for asylum while only if the rope slips does the killer seek refuge. Hence, we have a contradiction which must be removed.

The first half of the conflict is resolved in the following way: in the case of a rope slipping,⁴ the first view, no asylum granted, refers only to an enemy (who is not afforded protection from the blood avenger because it

can be said that he killed with malice aforethought) while the second view, the Baraitha which provides asylum for the killer, refers to a case of a non-enemy (where there is no reason even to suspect malice aforethought). In the case of the rope snapping⁵, the conflict is resolved in this way: the first view, asylum provided, is the view of the Rabbis while the second view, the implied view of the Baraitha that no asylum is necessary in the case of snapping represents the view of Judah Hanasi. The basis of this resolution is the first part of the Mishnah that we considered in chapter II: "If the axe-head slips [snaps loose] from its helve and causes death to result, Judah Hanasi holds that the killer does not have to seek asylum and the Rabbis hold that he does." The position that if the rope snaps the killer (even in the case of the enemy--how much the more in the case of a friend!) may seek asylum represents the view of the Rabbis, for the Mishnah of chapter II informs us, "If the iron snaps loose from its helve . . . the Rabbis hold that he [the killer] does [go into asylum]," the snapping of the rope being analogous to the snapping loose of the axe-head from its helve because the piece of rope remains in the hand as the helve does. On the other hand, the implied position of the Baraitha, that if the rope snaps the killer does not have to seek asylum, is the view of Judah Hanasi for the Mishnah of chapter II informs us that in the case of the iron snapping loose

from the helve; analogous to the case of the rope snapping, no asylum is necessary.⁶ On this basis, the conflict between the two sources is resolved and the position of R. Simeon, as stated in the Mishnah, is upheld.

CHAPTER VI

B. MAKKOTH 9B-11A

The Mishnah and Gemara to which we now direct our attention comprises the longest section of the second chapter of Makkoth. It is largely aggadic rather than halachic. The Mishnah considers the following topics: the places where those who seek asylum must go to find it, the number of cities which afford asylum, the connecting links between the cities of asylum, the protection the manslayer is to be given while he flees to the cities of asylum, and the original practices that were connected with cases involving asylum. For purposes of convenience, we have divided the Mishnah into five sections.

The first section informs us of the places to which one who seeks asylum must go and gives us the biblical authority which allows for the existence of these places. One who seeks refuge from the blood avenger goes to any one of the three cities of asylum in Canaan or the three cities of asylum in Trans-Jordan. The legitimacy for the existence of these six cities is based upon Numbers 35:13-14, " . . . there shall be for you six cities of asylum: you shall place three cities in Trans-Jordan, and you shall place three cities in the

land of Canaan which shall be cities of asylum."

The second section informs us that none of the six cities of asylum provided asylum until they all, as one, provided asylum. That is, the three cities in Trans-Jordan, which were chosen before the three in Israel, did not provide asylum until those in Israel were chosen. The basis for this is Numbers 35:13, "There shall be six cities of asylum," which is understood in the sense that the number, six, is to be taken literally.

The third section states that direct roads were set up leading from one city of asylum to another. The basis of this is Deuteronomy 15:3, "Prepare a road that you divide the border of your land into three . . . that every murderer might run there," that is, to the city of asylum. By way of implication, we infer that the cities were set up in such a way that they were easily accessible.

In the fourth section we learn that every effort was made to protect the manslayer as he fled to the city of asylum. Though the manslayer was fair game to the blood avenger up until the moment that he set foot into the actual city of asylum, efforts were taken to discourage the blood avenger from harming the manslayer before he had a chance to reach the city of asylum. This section of the Mishnah states that two scholars were appointed to escort the manslayer to the cities of asylum so that they could speak on the manslayer's behalf if the blood avenger tried to kill him on the way. Based upon

Deuteronomy 19:4, which is understood here to mean, "This is the word of the manslayer," R. Me'ir, understanding this to be an indication that the manslayer had a word of his own, said that the manslayer could, if he wished, speak on his own behalf. R. Me'ir expands the view of the beginning of this section.

From the fifth section we infer that until proven otherwise, all killers are treated as manslaughterers. This section, stated in the name of R. Jose bar Judah, informs us that before the trial, the manslayer and the wilful murderer are treated the same way, both being sent to the city of asylum. At a later time, the court brings out the accused to stand trial. On the basis of the outcome of the trial, if one is found guilty of a capital crime, he is put to death by the court; if one is found not guilty of a capital crime, he is freed; and if one is found liable to asylum, he is returned to the city of asylum. The Scriptural basis for the latter point is derived from Numbers 35:25, " . . . the congregation shall return him [the manslayer] to the city of asylum to which he had originally fled."

The Gemara opens with a well-known Baraitha which expands the information given us in the Mishnah. We learn here what the names of the cities of asylum were, although this is found in Scripture. This Baraitha states that Moses set apart three cities in Trans-Jordan corresponding to which Joshua set apart three in Canaan. Furthermore,

the cities were set up like two rows of trees in a vineyard: Hebron, in Judah, corresponding to Bezer in the Wilderness; Shechem, in Mount Ephraim, corresponding to Ramoth, in Gilead; and Kedesh, in Mount Naphtali, corresponding to Golan, in Bashan. The basis for this is Joshua 20:7f and Deuteronomy 4:43. Finally, Deuteronomy 15:3, " . . . that you divide the border of your land into three," is interpreted to mean that the distances from the southern boundary to Hebron, from Hebron to Shechem, from Shechem to Kedesh, and from Kedesh to the northern boundary were to be similar. From this we infer that the verse was understood to mean, " . . . that you divide the border of your land equally," because four sets of distances are mentioned and not three.

Noting that only two tribes had their territories in Trans-Jordan in contrast to the ten that had their territories in Israel¹, the Gemara questions why the same number of cities were necessary in Trans-Jordan as were necessary in Israel. We would not logically expect this.

Abaye answers the query of the Gemara in an aggadic fashion: manslaughter was a more common occurrence in Gilead (which is in Trans-Jordan) than in Israel. The proof for this is Hosea 6:8, "Gilead is a city of them that fashion iniquity, foot-tracked from blood." R. Elazar concludes Abaye's answer by responding to the question of the Gemara which asks what "foot-tracked from blood" means. R. Elazar says that "foot-tracked from blood"

means that the people there tracked down people and killed them. Hence, manslaughter was a common occurrence in Gilead.

In addition to this, upon noting that in Trans-Jordan the cities of Hebron and Shechem lie nearer each other than the other cities on the line and, also, that the cities of Ramoth and Golan, in Canaan, are closer together than the other cities on the line,² Abaye, in answer to the question "why are some cities further apart at one end and closer together at the other?"³ (the Gemara text is out of order at this point) answers again in an aggadic fashion that it was necessary that the cities be situated in this way because manslaughter was also frequent in Shechem (hence the need for more accessible cities of asylum). The proof of this is Hosea 6:9, "And as the bands of robbers wait for a man, a group of priests, in the way toward Shechem do they murder." R. Elazer concludes Abaye's answer by responding to the question of the Gemara which asks what "a group of priests" means. R. Elazer says that the people would join together in groups to kill people like those priests who join together in groups to divide terumah. Hence, manslaughter was a common occurrence in Shechem. It should be noted that both in this proof and in the previous one the derivations from Scripture are purely aggadic. Rather than proof-texts, the verses are pretexts. Rather than exegetical, the derivations are

eisegetical. Abaye is reading into the texts: the texts do not really suggest the inferred meaning from a scientific standpoint.

The Gemara then challenges our Mishnah, which stated that the number of cities of asylum is exactly six, by asking if there were not more than six cities of asylum. The basis for this objection is Numbers 35:6, "And in addition to them," i. e., the six cities, "you shall place forty-two," i. e., cities of asylum. The Mishnah, it is therefore pointed out, is in conflict with the Pentateuch.

Abaye resolves the conflict by showing that the Mishnah is referring to something different from that to which the Numbers 35:6 verse refers; and, therefore, the two passages are not in conflict. The six cities of asylum mentioned by the Mishnah afford asylum with or without the refugee's knowledge that the city grants asylum or with or without the refugee's having gone there to seek asylum. On the other hand, the forty-two cities mentioned by Numbers 35:6 provide asylum only if the person who goes there has asylum in mind when he goes to the city and knows that the city has the property of affording asylum. Therefore, the conflict is explained away, and the Mishnah does not conflict with Numbers 35:6.

The Gemara next challenges the legitimacy of two of the six cities of asylum in its asking how Hebron and Kedesh can be cities of asylum. This not only challenges

the Baraitha found at the beginning of the Gemara which mentions these two cities as being cities of asylum; it also challenges Joshua 20:7 where these two cities are mentioned and upon which the Baraitha is based. In the objection to Hebron Scripture is shown to be in conflict with Scripture, which, incidentally, in the talmudic scheme, is impossible since Scripture, it is held, is infallible and contains no contradictions, apparent contradictions all referring to different things.

The challenge to the legitimacy of Hebron is based upon Judges 1:20, "They gave Hebron to Caleb as Moses had spoken." The implication of this is that if the city was given to Caleb for a possession it could not be a city of asylum, for the cities of asylum were Levitical cities. Abaye resolves the seeming conflict between the two Scriptural passages by saying that Caleb was only given the surrounding of Hebron but not the city itself; therefore, the assertion that Hebron is a city of asylum is not contradicted. The proof text for Abaye's assertion is Joshua 21:12, "They gave to Caleb the son of Jephunneh the field of the city and its villages for his possession."

The challenge to the legitimacy of Kedesh is derived from Joshua 19:35f, "The fortified cities are: . . . Kedesh" Now there is a Baraitha which states that "they do not make these cities [i. e., the cities of asylum] small castles or large fortified places; rather, [they make them] middle-sized towns." This leads us to

the following: if cities of asylum cannot be fortified places, and Kedesh is a fortified place, Kedesh cannot be a city of asylum. This is contrary to the assertion of the Baraitha of the outset of the Gemara and to the assertion of Joshua 20:7.

The conflict is reconciled by R. Joseph (b. Hiyya, third generation Babylonian Amora) who states that there were two cities by the name of Kedesh. The implication of this is that the fortified city of Kedesh is not the city of Kedesh mentioned in Joshua 20:7. Therefore, the Kedesh of Joshua 20:7 is, indeed, one of the cities of asylum. R. Ashi (sixth generation Babylonian Amora) cites another example of the phenomenon of two cities having the same name in support of R. Joseph. The two cities he mentions are Selucia and Fort of Selucia.

Under the device of *kol*, the Gemara now makes an element, a link, of the previous argument the main subject of the discussion. That link is the Baraitha in which it is learned that cities of asylum cannot be fortified cities.

The full Baraitha is stated here, and, in relation to our Mishnah, expands the information of the Mishnah because it tells us how the cities are to be built, where (in relation to certain essentials necessary to sustain life) the cities are to be located, and what article may not be brought into, or set out in, the cities. The Baraitha tells us that a city of asylum is not to be made

as a small castle nor a fortified place but, rather, as a middle-sized town. The city is to be established only at a place of water, but if there is no water there water is brought into the city. It is only to be established in a market district (so that provisions will be available⁴),. It is only to be established in a populous district (so that there will be settlements that will be close at hand and, consequently, a force of blood avengers will not overwhelm the city⁵); and, as a consequence, if the surrounding population diminishes, more people are brought to the surroundings. In addition, if the local residency diminishes, priests, Levites, and Israelites are brought there. According to the view of R. Nehemiah (third generation Tanna) weapons may not be sold in the cities of asylum although the Sages permit the sale of weapons. Finally, in the cities of asylum, traps may not be set out nor ropes left dangling about so as not to encourage blood avengers to come around. R. Isaac (fourth generation Tanna) provides the Scriptural basis for this Baraitha; and it is found in Deuteronomy 4:43, "And he [the manslayer] shall flee there [to the city of asylum] and live." This is interpreted to mean that [the state] must provide the refugee with the means through which life (and livelihood) can be sustained. Hence, the provisions of the Baraitha.

On the Basis of the same interpretaion that R. Isaac gives of Deuteronomy 4:43, the Gemara cites another

Baraitha, "When a student goes into asylum, his teacher goes into asylum with him." R. Zeira draws an inference from this Baraitha and says that a man should not teach a student who is not a proper person. The logic behind this inference is that if one teaches a pupil who is not a proper person, he might find himself in the predicament of having to go into asylum for a crime he did not commit.

R. Yohanan states the reverse of this Baraitha and says that if a master goes into asylum his entire academy goes into asylum with him.

This is challenged because another passage--cited here--purports R. Yohanan to have said, "From which biblical source do we know that the words of Torah provide asylum?" That is, asylum from evil, implying that the Torah does provide asylum and that a master, because he studies Torah, would never do anything that would cause him to have to seek the refuge of asylum. We know it from Deuteronomy 4:42-44, "He shall flee to one of these cities and live: Bezer . . . Ramoth . . . Golan, and this, the Torah which Moses placed before the children of Israel." This homily is based upon the exegetical device known as *shema* whereby two passages in Scripture which are in close proximity to one another are joined together for exegetical purposes. The passage here is read in conjunction with the next verse which then means that the Torah is a [city] of asylum. Therefore, the immersing of oneself in the Torah is an act of asylum which protects the one who participates in

the act from doing evil. The contradiction between the first statement of R. Yohanan and the second is as follows: the first statement implies that a master can commit an act that will force him to go into asylum and the second implies that he cannot.

The conflict between the two passages is resolved by saying that R. Yohanan has in mind a different teacher in each of the two passages. In the second passage R. Yohanan refers to a teacher who translates his learning into practice and in the first he refers to one who does not (i. e., one has to put into practice the laws of the Torah in order for the Torah to provide asylum from doing evil). Another way to resolve the conflict is to say that when R. Yohanan, in the second passage, said that the Torah provides asylum, protection, he meant asylum from the Angel of Death.. An aggadah about R. Hisda is then cited which illustrates how the study of Torah protects someone from the power of the Angel of Death.

The Gemara now turns to a presentation of a string of aggadic Midrashim which are all eisegeses of Scriptural verses. All of these Midrashim relate to the previous section in that they deal with the two subjects of the immediately previous section, the cities of asylum and the study of Torah. This relationship is the reason that the redactors included these Midrashim in this place. This string of Midrashim brings the first major division of the Gemara to our Mishnah to a close.

The second division of the Gemara has, as its listed subject, this statement from our Mishnah: "Direct roads were set up between them [the cities of asylum]."

The Gemara opens with a Baraita that expands the scope of the Mishnah. It tells us, giving as the quoted authority R. Eliezer b. Jacob, that at the crossroads signs were erected which indicated where the cities of asylum were. The reason for these signs was to help the manslayers, fleeing to these cities for sanctuary from the blood avenger before their trials, avoid the wrong road and not get to the cities. We see here that every possible help was given the manslayer to escape the blood avenger.

The Mishnah gives as its proof text for the subject under discussion the text of Deuteronomy 15:3, "Prepare the roads..." The Gemara understands the verse to mean, "Make a preparation for the use of the road," a means by which a fleeing manslayer will be able to find and use the road. This verse is taken as the Scriptural authority for the signposts.

The Gemara now gives a proem of R. Hama bar Hanina to a sermon on the topic under consideration. The proem opens with the formula, **ר' חמא בר חנינא פתח וכו'**, R. Hama bar Hanina opened his discourse on this parasha from here, followed by a verse from the Hagiographa. From this verse a lesson is drawn. The verse is Psalms 25:8, "Good and upright is the Lord; therefore

he will instruct sinners on the way." (We note how the concept of "instructing on the way" clearly relates to the subject of signposts pointing to the cities of asylum; this is the reason that this proem is inserted here by the redactors.) A deduction from this verse based upon an a fortiori argument is that if God will teach sinners, how much more will he teach the righteous.

The Gemara, because it has given one proem, now gives another. This one is related to the first because it opens with the same formula as the preceeding proem and because it deals with the relationship to a situation involving the cities of asylum. The proem is ascribed to R. Simon b. Laqish (Resh Laqish, second generation Palestinian Amora). Two verses are considered in this proem. The first, Exodus 21:13, states, "And he who did not lie in wait, but the Lord caused it to come to hand, [for such a one] I make for you a place whither he may flee." The second, from I Samuel 24:13, states, "As the ancient parable says, from the wicked shall go forth wickedness..." According to this proem, the texts we have before us refer to an instance where two men each killed a man, one intentionally and one inadvertently. In both cases, however, there were no witnesses; and, therefore, no punishments could be meted out by a court. What happens in such an instance? The Lord causes both men to go to an inn. At the inn, the Lord causes the man who killed intentionally, the murderer, to sit under a ladder while the other who inadvertently killed,

the manslayer, is brought to being upon the ladder from which, while descending, he falls and kills the murderer. The result is, therefore, that the murderer is put to death while the manslayer now must flee to the city of asylum.

The basis for this exposition is the idea that from the Exodus verse one can question Divine justice. God causes a man to inadvertently kill. Therefore, why should that man have to go into asylum? The answer comes from the I Samuel verse. The manslayer is not altogether blameless. We might say that this is the reason why he, rather than another, is chosen to do God's bidding. This being the case, it is justifiable that he be the one to be forced to the city of asylum. If we note the cases in which a man must seek asylum, we see that there is always some negligence involved. This alone is a kind of "wickedness." What this Midrash gives us, then, is a theological basis for the justice of the law of asylum.

Following this Midrash is another which asserts free will: at least initially, a man can go in whatever direction he desires. If we consider this second Midrash together with the previous Midrash as a unit, we see the Gemara's point of view: it is man that causes himself to be in a position where he will have to seek asylum, and God does not randomly pick just any man to do his bidding.

In this second Midrash, Rabbah bar Rav Huna, (third generation Babylonian Amora), quoting R. Huna (second generation Babylonian Amora), or R. Huna quoting R. Elazar,

an alternate source of the Midrash, says that the idea that man is led in whatever path he desires is found in the Torah, the Prophets, and the Hagiographa. Whenever a three-fold citation as this is given for an idea, the idea is reckoned to have absolute support.

From the Torah: we read in Numbers 22:12, "Then God said to Balaam, 'You shall not go with them,'" and we read in Numbers 22:20, "If the men come to call you, go with them." This shows that Balaam, as well as all men, have free choice. Since God tells Balaam both to go and not to go, and since God and Torah by definition of the Talmud contain no contradiction, this apparent contradiction must mean something non-contradictory. That is, the Midrash implies, that God only gives alternatives; man must make a choice.

From the Prophets: we read in Isaiah 48:17, "I am the Lord your God, who teaches you for profit, who leads you on [whichever] road you go. The implication of the Isaiah verse, as the Midrash understands it, is that the path which a man follows is the result of his own choosing.

From the Hagiographa: we read in Proverbs 3:34, "If he is of the scorers, he will [be allowed⁶] to speak scorn; and if he is of the modest, he will give forth grace." The implication of this, according to the Midrash, is that a man is led on the path of his own choosing.

The Gemara now returns to a halachic consideration of the manslayer's trip to the cities of refuge on the roads

leading to the cities. The Gemara here expands the subject matter of the Mishnah.

This halachic consideration opens with a statement of R. Huna who holds that if while a manslayer is fleeing to the city of asylum and the blood avenger finds him while on the way and kills him, the blood avenger is exempt from punishment. The basis for this position is a phrase found in Deuteronomy 19:6, "and there is no judgment of death for him." The word, "him," has an ambiguous antecedent, and R. Huna holds that its antecedent is the blood avenger.

An objection to R. Huna is raised from a higher source in an argument stated in this form:

- A. You say the antecedent of "him" is the blood avenger.
- B. However, is the antecedent [not] the manslayer, as I assert, or is it the blood avenger [as you assert]?
- C. Since we also read in the same verse, "since he did not hate him in time past," the antecedent of the word, "him," is obviously the manslayer!

This is an apparent refutation of R. Huna. The logic involved is as follows: R. Huna reads Deuteronomy 19:5-6, "...he shall flee to one of these cities and live, lest the blood avenger pursue the manslayer, [the blood avenger] being enraged, and overtake him--the road is very great--and kill him. And there is no judgment of death for him [the blood avenger]." The objecting position reads the end of the

passage as follows: "...lest the blood avenger...kill him when he [the manslayer] is undeserving of death since he did not hate [the victim] in time past."

The conflict is resolved as it is stated that R. Huna is merely arguing the view of a different Tanna; and, therefore, we have only a statement of two different views instead of a real conflict. The Tanna that R. Huna follows argues as follows::

- A. The antecedent of "him" is the blood avenger.
- B. You say that the antecedent is the blood avenger.
Is it perhaps the manslayer?
- C. Answer: when the text says, "And he hated him not in time past," the text is speaking of the manslayer who did not hate the victim. Therefore, when the text says, "there is no judgment of death for him," it must be speaking of the blood avenger (for, if it is not, the text contains a superfluous element, which cannot be).

The Gemara, at this point, returns to a discussion of a point of the Mishnah which the Gemara expands via the device, *לדן*. The Gemara in the previous section has been discussing the question of the blood avenger's liability in the case where the blood avenger found the manslayer on the road and killed him. The Gemara now goes on to show that attempts were made to prevent the blood avenger from killing the manslayer before he reached the city. Since this is a logical progression of ideas, it is

brought up at this point. The statement of the Mishnah is as follows: "Two scholars were appointed to escort him [the manslayer] there [to the city of asylum] and speak on his behalf lest anyone [i. e., the blood avenger, try to] kill him on the way."

The Gemara, asking what the scholars said to the blood avenger, now posits, "Do they not warn the blood avenger that if he kills the manslayer he will be liable to the death sentence?"

The answer is no,, for according to a Baraita they speak words befitting the occasion and tell the blood avenger not to act like a murderer since the matter came to the manslayer's hand inadvertently. This is followed by the statement of R. Me'ir found in the Mishnah which asserts that the manslayer may, if he desires, speak on his own behalf. Finally, the Gemara states that the scholars also say to the blood avenger that much is effected for Providence through agents.

At this point the Gemara takes exception to one of the statements contained in the plea of the scholars, "the matter came to the manslayer's hand inadvertently," objecting to the statement on the grounds that it is an obvious statement and need not, therefore, have ever been said. The reason for this objection is found in this question: if the act of killing had been intentional, would the killer be allowed the protection of the city of asylum?

The Gemara therefore must show that the objection is

invalid, and it does so by saying that even in the case of murder the murderer is afforded the protection of asylum until the case is tried, as we learn from a Baraitha. The source if the Baraitha cited here is R. Jose bar R. Judah, and the Baraitha is an expansion of the view of the same sage as found in our Mishnah. The Baraitha, in contrast to our Mishnah, contains proof-texts for all three verdicts possible at the trial whereas our Mishnah only gives a proof-text in the last instance. In the Baraitha, the proof-text giving the court authority to put one adjudicated a wilful murderer to death is Deuteronomy 19:12, and the proof-text giving the court authority to free one adjudicated innocent is Numbers 35:25. In addition, in the Baraitha, we have preserved R. Judah Hanasi's dissenting view to R. Jose b. R. Judah's fundamental assertion that all murderers who go to the city of asylum before the trial are granted asylum until the trial. R. Judah Hanasi holds that the city of asylum does not grant asylum to wilful murderers at any time, not even before the trial. This view is probably based upon R. Judah Hanasi's reading Deuteronomy 19:11-12 in this way: "If it be that a man hates his fellow and lies in wait for him, rises up against him, smites him that he dies, and then flees to one of the Cities of God, the elders of the city shall send and take him from there and give him unto the hand of the blood avenger so that he dies."

If we consider the Baraitha as a unit--as we must--we

can abstract from the two views a category or topic of discussion into which both views fit. That topic is this: in what instances does a city of asylum provide sanctuary, and in what instances does it not? The redactor also implies this abstraction in his placing, at this point, two more situations in which the cities of asylum do not provide sanctuary to one who flees there.

In the first, R. Elazar states that a city of asylum, the majority of whose residents are murderers cannot provide sanctuary for any new fugitives. The authority for this statement is Joshua 20:4, "He shall flee to one of the cities, stand at the entrance of the gate of the city, and speak his cause in the ears of the elders of that city." This is interpreted to mean that he must speak his cause and not a cause like their own. In the case that the majority of the city's residents are murderers, his cause would be a cause like their cause.

In the second, R. Elazar states that a city of asylum which has no body of elders cannot admit those seeking sanctuary. The authority for this statement is again Joshua 20:4. R. Elazar understands the manslayer's pleading of his cause to be a prerequisite to his entering into the city; and if there is no body of elders, he cannot make his plea and, therefore, cannot enter.

The Gemara now presents an amoraic controversy over whether or not a city of asylum without a body of elders can admit fugitives. The disputants are R. Ammi (third generation

Palestinian Amora) and R. Assi (third generation Palestinian Amora). Following this controversy are two more controversies between R. Ammi and R. Assi, both identically parallel to the first controversy, over whether or not in a city in which there is no body of elders a person can be declared a "stubborn and rebellious son," and over whether or not in a city in which there is no body of elders a murder-atoning heifer can be brought.

The first controversy over the question of whether or not a city that does not have a body of elders can admit fugitives, R. Ammi holds that it can admit fugitives while R. Assi holds that it cannot. The ground for the controversy is the interpretation of Joshua 20:4. R. Assi holds that this verse teaches that the presence of elders is an essential requirement that must be met in order for sanctuary to be granted, and R. Ammi holds that this verse states that the presence of elders is but a general requirement that should be met in order for sanctuary to be granted. According to R. Ammi, if there is no body of elders, the person may still be admitted.

Following the three controversies between R. Ammi and R. Assi, the Gemara considers the totality of the section of Scriptures from which the verse which touched off the previous discussion came. That section, the whole of Joshua 20, is called, by the Talmud, "The Section on Murderers." A peculiar characteristic of this chapter is that while in every other place in the book of Joshua

God's addresses to Joshua are preceded by the words,

ה' אמר, "God said," here, in this chapter, the address begins, ה' נאמר, "God spoke." The Gemara makes this unique use of the verb, נאמר, its subject of discussion.⁷

R. Hama bar Hanina asks why the Section on Murderers is spoken in the strong language of ה' נאמר. The usual connotation of נאמר is as an introduction to a speech in command in contradistinction to אמר which is, generally, an introduction to a speech in address. The former has a much harsher connotation than the latter.

The answer to R. Hama bar Hanina's question is that the content of the Section on Murderers is from the Torah. That is, נאמר is a command to Joshua to fulfill a commandment of the Torah, namely, to set up cities of asylum. According to Rashi, this is the only time in the book of Joshua that God tells Joshua to fulfill a command found in the Torah.⁸ This being the case, the use of the verb נאמר is justified.

The Gemara challenges the basic assumption of R. Hama bar Hanina by asking if every speech involving the verb, נאמר, implies a harsh tone. The implication of the question is that, perhaps this section is not spoken in harsh language. Furthermore, if it is not, R. Hama bar Hanina's question as well as the answer to it are invalid and illegitimate.

The challenge is met, as Genesis 42:30 is cited:

"The man [Joseph] spoke [נאמר] harsh words with us."

By a heqqesh, an analogy, we learn by implication from this verse that **נָתַן** is synonymous with harsh speech.

This answer is challenged by means of a Baraita that implies that there is at least one use of **נָתַן** that does not connote harsh speech. Such a use is found in Malachi 3:16: "Then they that feared the Lord spoke [**וַיִּשְׁמְרוּ**] to one another." **וַיִּשְׁמְרוּ** is interpreted here in the Baraita to mean gentle speech. Similarly, we read in Psalms 47:4, "Let him lead [**וַיִּשְׁמְרוּ**] peoples under us and nations under our feet." This also implies gentle speech. Therefore, **נָתַן** does not always imply a harsh tone: two verses show the opposite, and R. Hama bar Hana's basic assumption again stands challenged.

The conflict is resolved as the Gemara says that the verb, **נָתַן**, in each different binyan forms a separate case. Therefore, on the basis of this point, R. Hama b. Hana's assumption still stands because no pi'el form of the verb, **נָתַן**, has been brought which implies gentle speech, and R. Hama b. Hana's original question stands as legitimate.

The Gemara continues with a pair of discussions flowing from the previous discussion, which consider various aspects of the book of Joshua. These are followed by a dispute over the fitness of a Torah scroll, the skins of which are sewn together with flaxen thread. With this, the Gemara to our Mishnah draws to a close.

CHAPTER VII

B. MAKKOTH 11A-11B

We now turn our attention to the first part of a consideration of how the length of time that a manslayer must remain in the city of asylum is determined. On the basis of this Mishnah as well as of the next, we shall see that the period of time which the manslayer must remain in the city of asylum depends upon how long the high priest lives, the manslayer being allowed to leave the city at the death of the high priest.

We learn from an anonymous view included in this Mishnah that at the death of the high priest, whether he be a high priest annointed with the oil of sanction, a high priest consecrated through the ceremony of multiple vestments, or a high priest who had retired from office, the manslayer is allowed to return home from the city of asylum. To this group, of priests whose death allows the manslayer to return home, R. Judah adds the priest who was annointed for battle.

Rashi informs us of the exact meaning of each of these references to types of priests. The term, "a high priest annointed with the oil of sanction," is a reference to those high priests who served up to the time of King Josiah and who were invested with the priestly office through annointment. The term, "a high priest

consecrated through the ceremony of multiple garments," is a reference of those high priests who were invested with the priestly office from the time of King Josiah on. Instead of being annointed as their forerunners had been, the priests of this group were consecrated by means of eight garments which they wore while serving in the priestly office. The term, "a high priest who had retired from office," is a reference to a priest who had served in a case in which a disqualifying defect occurred in the regular high priest who, as a consequence, had been replaced by this priest. When the then disqualified high priest had recovered from his defect and had returned to service, this replacement high priest had retired from office. The term, "a priest who was annointed for battle," is a reference to the high priest who was especially installed during wartime for the express purpose of proclaiming the law to the warriors. We find a reference to such a priest in Deuteronomy 20:2-7.¹

The Mishnah then informs us that, as a consequence of the law cited in our Mishnah, the mothers of the priests used to provide sustenance and clothing to the manslayers in the cities of asylum so that they would not pray for the death of their sons, the priests.

The Gemara begins with a call for the Scriptural authority of the anonymous opening assertion of the Mishnah that the three mentioned categories of priests cause, upon death, the manslayer to be freed from asylum.

The Scriptural authority is provided by R. Kahana who cites three biblical verses: (1) Numbers 35:25, "And he [the manslayer] shall dwell in it [the city of asylum] until the death of the high priest"; (2) Numbers 35:28, "For he [the manslayer] shall dwell in the city of asylum until the death of the high priest"; (3) Numbers 35:28, "After the death of the high priest the manslayer shall return to the land of his [the manslayer's] holding."

We have, in this passage, an example of the shorthand of the Talmud. Basically, all three of these biblical verses appear to mean the same thing. However, in the talmudic scheme, Scripture does not duplicate itself; no verse--or even word--is superfluous in Scripture. Now, if all three of these verses said the same thing, Scripture would be guilty of a violation of this talmudic principle; and that is impossible. Therefore, the term, high priest, mentioned in each of these three verses, must have a different meaning from the term, high priest, used in the other two; and, since three different types of high priest cause the manslayer's release from asylum, the Mishnah's assertion is justified.

The Gemara then asks for the Scriptural authority for R. Judah's position, and, in answer, Numbers 35:32 is cited: "You shall take no ransom for him that is fled to the city of asylum that should return and dwell in the land [of his holding] prior to the death of the priest." The logic involved here is that since there is another

mention of "priest" in the same type of situation as those which are involved in the three mentionings of the term, "high priest" and in Numbers 35:25 and 35:28, another category of priests at death must cause the manslayer to be released.

Obviously, the author of the anonymous view of the Mishnah, which held that only three types of priests at their death cause the manslayer to go free, knew of the citation of Numbers 35:32. The question that the Gemara asks, therefore, is this: why does the anonymous view not utilize Numbers 35:32 as R. Judah does to include in its position the category of priest that R. Judah includes?

The answer that the Gemara gives is that since Numbers 35:32 only mentions "a priest" and not "a high priest," the author of the anonymous view takes Numbers 35:32 to be only a secondary reference to one of the verses that he used to arrive at his position and not a reference to another category of priest who upon death allows the manslayer to return home. R. Judah on the other hand, the Gemara implies, holds Numbers 35:32 to be a primary reference to another category of priests. On this basis, the difference of opinion is justified since each view is consistently following what it feels to be the meaning of Numbers 35:32.

The second section of the Gemara begins with a discussion of the last point of our Mishnah, "the mothers of the priests, therefore, used to provide sustenance and

clothing [to the manslayers in the city of asylum] so that they would not pray for the death of their sons [the priests]."

In its first point, the Gemara challenges the fundamental implication of the Mishnah by asking this question: if the manslayers pray for the death of the priests, will the priests really die? For if such prayers do indeed have any kind of efficacy, Proverbs 26:2 is contradicted. This verse reads as follows: "As the bird flits and the swallow flies, so the causeless curse will not come to be." What the Gemara tells us in stating this Scriptural challenge to the Mishnah, then, is that since the priests have done nothing to the manslayers, if the manslayers pray for the priests' deaths, i. e., if they curse them, the prayers should not have efficacy because they would be causeless curses which, Scripture implies, should not cause the deaths of the priests. This being the case, the Mishnah stands as challenged, the challenge claiming that there is no reason for the mothers to provide the manslayers with provisions.

The Gemara answers its own challenge. It asserts that the manslayers' prayers for the deaths of the priests would have efficacy because such prayers, curses, would not be causeless; and, therefore, Proverbs 26:2 would not be contradicted. The reason that the curses would not be causeless, an anonymous scholar says, is due to the fact that the priests should have implored Divine mercy for

their generation--had they done so, this argument implies, the manslaughterers would not have committed the manslaughter which forced them to flee to the city of asylum--and they did not. Therefore, it is implied, since the manslaughterers had legitimate grounds for cursing the priests, the mothers indeed had good reason for bribing the manslaughterers not to pray for their sons' deaths; and the Mishnah is upheld.

The Gemara now proceed to give a variant reading of the clause of our Mishnah which we are considering. This variant reading represents another tannaitic tradition: " [The mothers of the priests, therefore, used to provide sustenance and clothing for the manslaughterers in the city of asylum] so that they would pray that their sons should not die." Explaining this variant tradition, the Gemara says that the reason that the mothers provided sustenance was so that the manslaughterers would pray for their sons' well-being. It then asks, however, if the priests would die in the case that prayers asking God to spare their lives were not uttered on their behalf by the manslaughterers. The implied answer to this question is that the priests would die.

Therefore, the Gemara asks what the priests had to do in order to avert their deaths. Present here is an implication that the entire state of affairs is unjust: God punishes the priests because the manslaughterers do not pray. This is illustrated by two proverbs which the Talmud gives us; namely, "Toviah sins [the manslaughterer does

not pray], and Zigod is flogged [the priest dies]"; and "Shekhem gets the wife [Dinah], and Mabg'ai [his subject] must submit to circumcision." The Gemara must now show that the state of affairs is not unjust.

It does so. An anonymous scholar states that the priests should have implored Divine mercy for their generation--this would have prevented the manslayers from killing--and they did not. Hence, we see, it is not because the manslayers fail to pray that the priests be spared that the priests should die; rather it is because the priests fail to do what they are obliged to do that they die. It is the priests' own act of omission, in this case, that causes their deaths. This is documented by the account of a man whom a lion ate at a distance of three peras from the home of Joshua ben Levi (first generation Palestinian Amora). Because of this, Elijah, who frequently, according to tradition, visited Joshua ben Levi, did not come to him for three days because Joshua ben Levi had failed to shield the man from harm through prayer. Therefore, the variant to our Mishnah is upheld; the mothers had good reason to bribe the manslayers.

The next section of the Gemara, which breaks down into three subsection, is aggadic. It follows from the previous discussion, where it was shown that causeless curses, generally do not have efficacy. The Gemara here talks about the situation where a causeless curse does have efficacy, the first aggadic subsection proving, via

aggadic methodology, that a curse by a sage, even if it is causeless, has efficacy. The second subsection flows from the first--the subject varying slightly--as here it is aggadically proven that a curse by a sage, even if conditional, has efficacy. The third flows from the second--again the subject varying slightly--as now it is aggadically proven that a conditional ban, even if self-imposed, requires absolution.

The final consideration of the Gemara is halakhic, and an anonymous academic question about the meaning of the Mishnah is raised: is the intent of the Mishnah that the manslayer returns from asylum when one high priest dies or when all of them die? In answer, the Gemara cites a law from the next Mishnah: "if the verdict is reached when there is no high priest, he never comes out of asylum." Therefore, if there are high priests should he return at the death of one of them (implying that all of them have to die)? The final answer is that the Mishnah quoted deals only with the case where there is but one high priest. Therefore, our Mishnah allows us no inference one way or another about an instance where there are several high priests living at the time the verdict is reached. The original question to our Mishnah cannot be answered.

CHAPTER VIII

B. MAKKOTH 11B-12A

We see, in this Mishnah, the continuation of the consideration of the relationship between the death of the high priest and the length of time that the manslayer must remain in the city of asylum. In addition to this, we find in this Mishnah the specific prohibitions against a manslayer's leaving the city of asylum--for any reason--before the death of the high priest as well as the enforcement procedures which insure the manslayer's remaining in the city of asylum.

The first section of our Mishnah deals with the role of the high priest in determining the length of time the manslayer must remain in the city of asylum. It contains three laws: (1) "If the high priest dies after the verdict [of manslaughter] is reached, the manslayer does not go to the city of asylum [but, rather, is released]"; (2) "If, before the verdict is reached, the high priest dies and another high priest is appointed, after whose appointment the verdict is reached, the manslayer returns from the city of asylum upon the death of this second high priest"; (3) "If a verdict is reached without a high priest, or if one has killed a high priest, or if it is the high priest who has killed, [the one sentenced

to the city of asylum] never comes out of the city of asylum."

In the second section of our Mishnah, laws binding upon the manslayer after he returns to the city of asylum upon being found guilty of manslaughter are considered. The first part of this section contains a law which states that one who has been sentenced to the city of asylum may at no time during his sentence leave the bounds of the city of asylum, "not even to give testimony of religious obligation [e. g., to be a witness of a new moon], nor to give testimony in a monetary suit or a capital case, nor even if Israel needs him, nor even if he be a general as Joab ben Zeruiah." The reason for this prohibition is the interpretation of a phrase of Numbers 35:25, "he fled there," to mean "'there' shall be his abode, 'there' shall be his death, and 'there' shall be his burial."

The second part contains the law which provides the precise area in which the manslayer must remain in order to be within the boundaries of asylum: "Just as the city affords asylum, so does the area delineated by the Sabbath limits afford asylum." In other words, one sentenced to the city of asylum must not venture past the 2000-cubit point outside the strict boundaries of the city.

The third part contains a law which provides for the enforcement of the manslayer's asylum, namely, the threat of death if the manslayer leaves the area of asylum

before the high priest's death. Two views are given here.

"R. Jose the Galilean (second generation Tanna) holds that the blood avenger is under obligation [to kill the manslayer] while anybody else [who finds him] is permitted [to kill him]. R. Akiba (second generation Tanna) holds that the blood avenger is permitted [to kill him] while anybody else is held liable for [killing him]."¹

The Gemara to our Mishnah divides into five sections. The first section, the caption of which is "If the high priest dies after the verdict is reached, [the manslayer] does not go into asylum," gives the basis for the entire relationship between the death of the high priest and the freeing of the manslayer. The Gemara opens by asking what the reason behind the law of the caption is. Abaye, in answering, reasons a fortiori: if one who is already in asylum is released at the death of the high priest, how much the more should one who has not yet gone into the city of asylum not have to go when the high priest dies after the verdict is reached. The implied assumption of our Mishnah is that the sentence begins at the moment the verdict is reached and not at the moment when the man arrives back at the city of asylum.

This is objected to: perhaps the fact that the man has served time in the city of asylum is the atonement for his crime. On the basis of this objection, he that has not served time in the city has not obtained expiation. The Mishnah, therefore, stands challenged.

The Gemara counters the objection and gives us a principle of law. Serving time in the city of asylum does not grant atonement. Rather, the death of the high priest is the atoning factor.

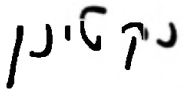
The caption of the second section of the Gemara to our Mishnah is this: "If before the verdict is reached, the high priest dies and another high priest is appointed, after whose appointment the verdict is reached, the manslayer returns from the city of asylum upon the death of this second high priest." This section of the Gemara contains three subsections.

The first subsection opens with a call for the Scriptural authority of the law under consideration. R. Kahana therefore cites Numbers 35:25, "And he [the manslayer] shall dwell in it [the city of asylum] until the death of the high priest who was appointed."

The Gemara follows this by questioning the seeming lack of justice involved in this situation: why should the high priest have to suffer death--to give up his life--for the atonement of the manslayer? The answer is that the high priest failed to implore Divine mercy that the manslayer would be acquitted; therefore there is justice since the priest, because he did not implore Divine mercy, deserves death.

In the second subsection, the Gemara, after talking about the state of affairs in connection with the death of the high priest at the time the verdict was reached, now

talks about a related subject where not the high priest dies but the convicted manslayer.

Abaye cites a received tradition which is signalled by the device, : "If a convicted manslayer dies after the verdict is reached, his body is brought to the city of asylum." The proof text for this tradition is Numbers 35:32, " . . . that he should return to dwell in the land until the death of the high priest." In interpretation, the Gemara asks what dwelling is in the land. The answer, of course, is burial, the Gemara understanding the phrase, "to dwell in the land," in a literal way.

An anonymous Tanna continues, "If the manslayer [in asylum] dies before the high priest dies, they bring his [the manslayer's] body to the family burial plot [when the high priest dies]." The proof text for this is Numbers 35:28, "And after the death of the high priest, the manslayer will return to the land of his possession." In interpretation, the Gemara asks what return is in the land of his possession. The answer, as before, is burial.

In the third subsection, the Gemara returns to the original problem under consideration but now adds a new twist: what happens if after the verdict is reached the high priest is found to be disqualified? Is this the equivalent of death, for purposes of freeing the manslayer, or not? This now becomes the issue of debate.

There are two views concerning the case in which after

the verdict is reached the high priest is found either to be a son of a divorcee or the son of a woman to whom halizah was performed (both of these situations make a priest disqualified for the priesthood). R. Ammi holds that the Office of the Priesthood dies when the fact is discovered, meaning that the man does not have to go into asylum.² In other words, R. Ammi holds that, for purposes of reckoning whether or not the man has to go into asylum, it is as though the high priest has died. On the other hand, R. Isaac Napaha holds that in such a case the Office of the Priesthood is reckoned as void ab initio for all the time that the disqualified priest has served. In such a case, therefore, R. Isaac Napaha holds that it is as if the case is concluded without a high priest. And, since there is no high priest in office at the time that the verdict is reached, the man can never come out of asylum.

The Gemara now cites a tannaitic dispute between R. Eliezer (b. Hyrcanus, second generation Tanna) and R. Joshua (b. Hananiah, second generation Tanna) and asks if the two previous amoraim differ on the same point as these two tannaim, that is, if there is a perfect parallel between amoraim and tannaim, a precedent for the amoraic dispute.

This is the tannaitic dispute: concerning a case where a priest was sacrificing on the altar and it became known that he was a son of a divorcee or the son of a woman to whom halizah was performed, R. Eliezer holds that all

sacrifices which he previously offered are voided while R. Joshua holds that such sacrifices are not voided.

The Gemara asks if we can categorically say that R. Ammi takes the view of R. Joshua and R. Isaac Napaḥa takes the view of R. Eliezer. In either dispute, if we take the side of R. Eliezer or R. Isaac Napaḥa, the results are disastrous for the parties concerned. The Gemara now shows that only one amora categorically follows a tanna.

It is true that we can say that R. Isaac Napaḥa follows R. Eliezer. However, both views, R. Ammi and R. Isaac Napaḥa can follow R. Joshua in that it can be said that R. Joshua holds his position in this specific case only. The reason for this is that there is specific verse covering the case in which R. Joshua ruled. The verse is Deuteronomy 33:11, "Bless, O Lord, his substance [*וְכָל*], and the work of his hands accept," where *וְכָל* is taken to mean *לְכָל פְּסוּל*, the profanities in his, thus giving us this reading of the verse, "Bless, O Lord, the profane sacrifices he has made." However, in a case in which a Priest was found disqualified after a verdict was reached, even R. Joshua, since there is no Scriptural verse to the contrary, could rule that the priesthood was ab initio voided. Consequently, he could rule, since there was no priest in office at the time the verdict was reached, the manslayer would never be allowed to return from asylum. Therefore, the original conjecture of the Gemara does not stand: there is no perfect parallel between the amoraic

and the tannaitic dispute.

The third section of the Gemara considers the following: "If a verdict is reached without a high priest . . . the manslayer may never come out from the city of asylum. [One who has been sentenced to the city of asylum may] at no time go out [during his sentence] . . . even if he be a general as Joab b. Zeruiah, as it is said, 'He fled there,' meaning, 'there' shall be his abode, 'there' shall be his death, and 'there' shall be his burial." This section of the Gemara divides into three subsections. The first two are aggadic and show (1) why Joab b. Zeruiah did not find sanctuary at the altar and (2) why the Patron Angel of Rome will eventually be destroyed.

In the third subsection, the question of burial in a city of asylum is raised, and the outcome gives us a new insight into the Mishnah: though those taking refuge in the cities of asylum would be buried in the cities proper, the Levites, to whom the cities were assigned in the Bible, could not be.

R. Abbahu holds that the cities of asylum were not given for the purposes of burial. The Scriptural proof for this position is Numbers 35:3, "The cities shall be for them [for the purpose] of dwelling, and their suburbs shall be for their cattle and their property and for all their living," which implies that the cities are for living and not for burial.

An objection is raised to R. Abbahu from a higher

authority, in this case from our Mishnah, where we read, "'there,' meaning, 'there' shall his abode be, 'there' shall his death be, and 'there' shall his burial be." The Mishnah, a tannaitic and therefore higher source than R. Abbahu, an Amora, teaches that there is burial in the city of asylum. Hence the objection.

The Gemara resolves the conflict between the two sources: the case of the manslayer is different from that which R. Abbahu had in mind because Scripture reveals the special treatment afforded the manslayer. On the other hand, R. Abbahu was talking about the Levites who, Scripture implies, cannot be buried in the cities proper.

The fourth section of the Gemara, a consideration of the statement of the Mishnah, "Just as the city affords asylum, so does the area delineated by the Sabbath limits afford asylum," opens with an objection by the Gemara to the statement of the Mishnah. The Gemara pitches a conflicting tannaitic source against our Mishnah: "Numbers, 25:25, which reads, 'And he shall dwell in it,' means he shall dwell in it, the city proper, and not in the area between the border of the city and the end of the Sabbath limit." The conflict, then, is this: in the Mishnah the domain of asylum extends to the end of the Sabbath limit while in the conflicting passage the domain of asylum seems to end at the regular border of the city.

Abaye attempts to reconcile the conflict: the Mishnah defines the limits of asylum while the conflicting

passage defines the area of the city which may serve as a domicile.

The Gemara objects to Abaye's interpretation of the conflicting passage by saying that the area which may serve as a domicile is derived from another passage: "One does not make a field a suburb, nor a suburb a field, nor a city a suburb, nor a suburb a city." The logic of this objection is this: just as two Scriptural passages cannot mean the same thing, so two rabbinic passages cannot mean the same thing. Therefore, R. Abaye's assertion that the conflicting passage defines the area of the city which may serve as a domicile is challenged.

R. Shesheth (third generation Babylonian Amora) resolves the conflict between the Gemara and Abaye in this way: the Baraitha which Abaye explained covers the case where there is a cave in the area between the border of the city of asylum and the Sabbath limit and prohibits living in such a cave. The Baraitha which conflicted with Abaye's explanation does not cover this case. Hence the conflict is resolved: the two baraitoth each give the law for a different case.

The fifth section of the Gemara covers the last part of our Mishnah: "If a [sentenced] manslayer goes out past the legal boundaries of the city of asylum and the blood avenger finds him, R. Jose the Galilean holds that the blood avenger is under obligation [to kill him] while anybody else [who finds him] is permitted [to kill him]."

R. Akiba holds that the blood avenger is permitted [to kill him] while anybody else is held liable [for killing him]." In this section the Gemara discusses the law concerning one who ventures outside the city of asylum. Further, this section divides into two subsections, the first of which divides into two sub-subsections.

In the first sub-subsection of the first subsection, the Gemara begins by citing a Baraitha which is an expanded parallel passage to our Mishnah. From reading Numbers 35:27 to mean "And when the blood avenger finds him [the manslayer] outside of the [legal] limits of the city of asylum, the blood avenger shall kill the manslayer; he [the blood avenger] shall have no blood guilt," R. Jose the Galilean holds that it is an obligation on the part of the blood avenger to kill the manslayer found outside the city; if there is no blood avenger, any man is permitted to kill the manslayer. On the other hand, by reading Numbers 35:27 to mean "And when the blood avenger finds him outside the [legal] limits of the city of asylum, if the blood avenger kills the manslayer, the blood avenger shall have no blood guilt," R. Akiba holds that the blood avenger is permitted to kill the manslayer but anyone else is held liable for killing him. Both readings of Numbers 35:27 are possible because of the ambiguous term, *נִגְזַל*, being translatable either as "he shall kill" or as "if he kills," and each view follows a different interpretation of the same verse.

The Gemara now gives a third position, differing

from the positions of R. Jose the Galilean and R. Akiba. This is the position of Mar Zutra bar Tovia (sixth generation Babylonian Amora) quoting Rav: if the manslayer goes out past the Sabbath limit and the blood avenger kills him, the blood avenger is put to death.

The Gemara asks who Mar Zutra follows since he does not follow R. Jose the Galilean or R. Akiba and states that he follows R. Eliezer whose position we learn from a Baraitha. R. Eliezer cites Numbers 35:12, "The manslayer shall not die until he stands trial before the congregation." Now, seeing that Numbers 35:27 says, "the avenger of blood may slay the manslayer," one might infer from Numbers 35:27 that he might slay him immediately. Therefore Scripture says, "the manslayer shall not die until he stands trial before the congregation."

By citing this Baraitha, the Gemara limits Mar Zutra bar Tovia quoting Rav's position to read thus: if the blood avenger kills the manslayer before he is tried, the blood avenger is put to death.

The next point that the Gemara makes is preceeded by an unstated, implied point. However, by realizing this point which the short-hand of the Gemara omits, one sees the logic of what follows. This step is this: why do R. Jose the Galilean and R. Akiba not arrive at Mar Zutra bar Tovia quoting Rav's position vis-a-vis R. Eliezer? The reason that they do not is because they do not interpret Numbers 35:12 as R. Eliezer does. Conversely, in order not

to accept R. Eliezer's interpretation of Numbers 35:12, they must have a substitute use for the verse. The Gemara, therefore, must seek R. Jose's and R. Akiba's use of the verse.

We learn how R. Jose and R. Akiba interpret "until he stands trial before the congregation" from a Baraitha. The verse is used as the biblical authority for the practice of a sanhedrin, which saw a person kill another, not putting that person to death until the person is tried by another court. In this interpretation, "congregation" is understood to mean people other than witnesses to the fact.

The second sub-subsection of the first subsection of the Gemara contains debate concerning a case in which there would be partial liability for killing one who strayed outside the bounds of asylum.

A Baraitha is cited: "From Numbers 35:26f, 'If the manslayer shall surely come out [כִּזְ' כִּזְ' פִּלֵּ] past the legal limit of the city of asylum . . . and the blood avenger kills him, there shall be no blood guilt,' one might infer that only in the case where the manslayer deliberately [ventured outside the domain of asylum he shall die]. Where do we learn [that he will die even if he strays] inadvertently? From the double use in the same verse of the verb, כִּזְ', which means, 'in any case.'" This is the position of the Baraitha which is making its point by explaining away a superfluous use of a word of Scripture, only one כִּזְ' being necessary.

Another Baraitha is cited in objection to the first. This Baraitha holds that only if the man deliberately strays is he legitimate prey to the blood avenger. If he unintentionally or accidentally strays outside the bounds of asylum, the one who kills him must himself go into asylum. The implication of this second Baraitha is that one is not free to kill a manslayer if he accidentally strays outside the boundaries of asylum, for if one kills him, that killer becomes the prey of the dead manslayer's blood avenger and must himself seek asylum. This indicates that killing an accidental strayer is not a permissible act.

The conflict is resolved in this way: each Baraitha is based upon a different fundamental assertion and a difference of opinion is allowed to stand. The second Baraitha is based upon the assumption that Scripture occasionally speaks in common language, that is that people in speech use the double verb form which means in this case, "if the manslayer shall surely [i. e., deliberately] stray . . . he shall be put to death." On this basis there is no superfluous word in the text. The first Baraitha, on the other hand, is based upon the assumption that Scripture never speaks in common language, and each use of the word *lc 3'* has its own meaning, one *lc 3'* covering the case of the manslayer who strays deliberately and the one *lc 3'* covering the case of the manslayer who strays accidentally. To conclude this subsection, the Gemara includes the view

of Abaye who defends the second Baraitha on the basis of logic.

The second subsection contains a discussion over whether or not a son can be a blood avenger when his father inadvertently kills another son who is a brother to the son about whom the question is raised. The Gemara presents two seemingly conflicting baraitoth on the subject.

The first reads, "If a father killed [a son], his son becomes his blood avenger."

The second reads, "One's [own] son cannot become the blood avenger."

The Gemara first states an attempted solution to the conflict, signalled by the device, *ICN*; the first Baraitha represents the view of R. Jose the Galilean who holds that it is an obligation of the avenger to avenge; the second Baraitha represents the view of R. Akiba who holds that avenging is optional.

The resolution is rejected since an unchallenged passage tells us that whether avenging is obligatory or optional, it is not permissible for the son to be the blood avenger which is what we desire to know. In this passage, the joint view of Rabbah bar R. Huna and the School of R. Yishmael is cited: "A son is never appointed agent [of a court] to flog or curse his father except in the case of a father who entices someone to idolatry." This is an apparent refutation of the first Baraitha.

The problem is solved as follows: the second

Baraitha is understood to mean that a son cannot, as a blood avenger, kill his father. The first Baraitha is understood to mean that a son [of the murdered man] can kill, as an avenger, his grandfather, who killed his [the grandfather's] son [who is the avenger's father]. In light of this interpretation, the Baraitha is read as follows: if a father killed [a son], his [the murdered man's] son becomes the blood avenger. Hence, the conflict is resolved.

CHAPTER IX

B. MAKKOTH 12A-12B

We consider now a special case involving the determination of the boundaries of asylum. In the Mishnah before us now we have the following law: "In the case where a tree stands within the Sabbath boundary [of a city of asylum] but its branches extend [over an area] outside [this boundary], or in a case where a tree stands outside the Sabbath boundary but its branches extend [over an area which is] inside [this boundary], everything [i. e., the whole tree] follows the branches [for purposes of determining whether or not a manslayer standing at the tree or on the branches is afforded asylum]."

In explanation of this law, Rashi informs us that the implication of our Mishnah is that even if the manslayer is at the tree's root, which is inside the Sabbath limit, if the branch extends over the limit he is considered as one outside the domain of asylum. Similarly, if the root lies outside the Sabbath limit but the branches extend over the limit to the inside, if the manslayer stands at the root he is considered within the domain of asylum; for, in this case, the root is considered a part of the domain of asylum.¹ Therefore, on the basis of this Mishnah, the determining element for ascertaining whether

or not a tree standing on the Sabbath limit is within the bounds of sanctuary (for the purpose of knowing whether or not the blood avenger is liable for killing the manslayer) is the position of the branches, the whole tree being reckoned on the basis of over what area the branches lie.

The Gemara opens by pitching a ~~contradicting~~ Mishnah, found in Ma'aser Sheni 3:7, against our Mishnah. (The Mishnah of Ma'aser Sheni, as will be indicated by the Gemara, is taught in connection with the eating of Second Tithes in Jerusalem.²) Since these two mishnayoth seeming contradict one another, the Gemara will have to reconcile the differences between them.

The Mishnah of Ma'aser Sheni 3:7 is as follows: "If a tree stands within [the wall of Jerusalem] and [a part of the tree] extends outside [the wall], or if a tree stands outside [the wall] and [a part of the tree] extends inside [the wall], then that [part of the tree] which extends from the wall inward is considered [to be] inside [the wall], and that [part of the tree] which extends from the wall outward is considered [to be] outside [the wall]."

The Gemara leaves it to us to fill in the details of the contradiction. In Mishnah Ma'aser Sheni, in contrast to our Mishnah, the branches are not the deciding factor. Rather, the wall, the boundary, of the city is the deciding factor. That part of the tree which is

inside the wall is considered as inside, and that part of the tree which is outside the wall is considered as outside. Hence the conflict with our Mishnah in which it is stated that no matter whether part of the tree is inside or outside of the Sabbath limit, if the branch of the tree extends outside the limit, the whole tree is considered as outside the limit, and if the branch of the tree extends inside the limit, the whole tree is considered as inside the limit.

The Gemara reconciles the conflict by objecting to the bringing in of the Mishnah of Ma'aser Sheni 3:7: one cannot make a case for contradiction when each Mishnah gives a law for a situation totally different from and non-analogous to the other. In other words, the two tannaitic sources do not conflict because there is no analogy between the cities of asylum and Second Tithes. Since we read in Deuteronomy 12:18, "Before [italics mine] the Lord, your God, [i. e., in front of the wall] you shall eat it [the Second Tithes]," we see that Scripture makes the law of the Second Tithes dependent upon the wall of Jerusalem. However, since we read in Numbers 35:28, "He shall dwell [italics mine] in the city of asylum," we see that Scripture makes the law of the cities of asylum dependent upon habitation. One can live on the branches of a tree, but one cannot live at the roots. Each Mishnah gives a law for a situation totally different from the other. Since the situations do not conflict, we say that

the laws do not conflict.

The Gemara, first showing how Mishnah Ma'aser Sheni 3:7 presents no threat to our Mishnah, now proceeds to attack Mishnah Ma'aser Sheni 3:7 and simultaneously defend our Mishnah by bringing in another tannaitic source, Mishnah Ma'asroth 3:10 which conflictsswith Mishnah Ma'aser Sheni 3:7 and which agrees with our Mishnah. Mishnah Ma'asroth 3:10 reads as follows: "In the case of Jerusalem [i. e., Second Tithes], we follows the branches [to determine if the tree is inside or outside of Jerusalem]; in the case of the cities of asylum, we follow the branches [to determine if the tree is inside or outside the boundaries of asylum]." This conflicts with Mishnah Ma'aser Sheni 3:7 because Mishnah Ma'aser Sheni 3:7 teaches that the wall of Jerusalem is the determining factor when the law of Second Tithes is involved, each part of the tree separately being reckoned on the basis of where it lies in relationship to the wall. This agrees with our Mishnah because our Mishnah teaches that the branches determine whether or not the whole tree is within the boundaries of asylum.

R. Kahana attempts to reconcile the differences between the conflicting sources by saying that each only represents the position of a different authority, the showing of a difference of opinion being a recognized way to reconcile a conflict. R. Kahana states that Mishnah Ma'asroth 3:10 and our Mishnah represent the view of

R. Judah while Mishnah Ma'aser Sheni 3:7 represents the view of the Rabbis.

The Gemara now addresses itself to testing R. Kahana's solution of the conflict between the tannaitic sources by attempting to find an explicit statement of R. Judah's view that shows that Mishnah Ma'asroth 3:10 and our Mishnah are in fact representations of his view.

The explicit statement is found in a Baraitha which is attributed to R. Judah: "In the case of a cave, one follows after the opening [of the cave for purposes of determining where the entire cave lies, i. e., where the mouth of the cave is, so the entire cave is considered to be]. In the case of a tree, [the trunk] follows the position of the branches." (The laws cited in both cases have as their referents the determination, for purposes of fulfilling the laws of Second Tithes,³ of the location of a whole tree or whole cave when part of the tree or of the cave is situated on the Jerusalem border.)

To test the hypothesis of R. Kahana, the Gemara first seeks to ascertain what this Baraitha, explicitly attributed to R. Judah, refers to. In order to uphold R. Kahana's solution, the Gemara must show that the Baraitha is congruent, regarding R. Judah's view that trees follow their branches, with Mishnah Ma'asroth 3:10 both in connection with Second Tithes and in connection with the cities of asylum.

The Gemara therefore asks this question: regarding

what case did R. Judah cite the position we find in the Baraitha? The answer is that R. Judah cited his position in connection with Second Tithes, where it leads to a strict position. If the root is outside of the wall and the branch is inside of the wall, just as a man cannot redeem the fruit of the branch but must eat it inside of Jerusalem, so he cannot redeem the fruit at the root of the tree but must eat it inside of Jerusalem. Similarly, if the root is inside the wall and the branch is outside of the wall, just as a man cannot eat the fruit of the branch without first redeeming it, so he cannot eat the fruit at the root without first redeeming it.

The Gemara now applies the same reasoning to the case of the cities of asylum. No problems are encountered when the root of the tree is outside the Sabbath limit and the branch is within it: just as when the manslayer is on the branch the blood avenger cannot kill him, so when he is on the root the blood avenger cannot kill him. However, when the root is inside the Sabbath limit and the branch is outside of it we have the following situation: while it is true that the blood avenger can kill the manslayer when the manslayer is on the branch, can it be maintained that the blood avenger can kill the manslayer when he is at the root? Obviously not because the manslayer, when he is at the root, is clearly inside the bounds of asylum.

On the basis of this analogy between Second Tithes and the cities of asylum, R. Kahana's solution seems to

break down. If we say that R. Judah always leads to the strict position, then we end up, on the basis of this analogy, with the impossible situation of the blood avenger being able to kill the manslayer while he is inside the bounds of asylum afforded by the city!

Rabba offers another argument to uphold R. Kahana. He states that all would agree in the case where the root is inside the boundary and the branch is outside, that the blood avenger cannot kill the manslayer when he stands at the root just as he can kill him with arrows and rocks when he is in the branch. The disagreement arises, however, in a case where the root (within bounds) is to be used as a ladder for climbing up to the branch (outside of bounds). In this case, Rabba states, R. Judah would hold that the blood avenger can climb up the root to get to the branch, while the Rabbis would hold that he cannot. This seems plausible, following R. Judah's position that root follows after branch and the Rabbis' position that what is inside the boundary is inside and what is outside the boundary is outside.

However, the concluding point of the Gemara, stated by R. Ashi, changes the picture. R. Ashi's statement, the final position of the Gemara which changes the law of the Mishnah, is an interpretation of the phrase, "everything follows the branches," to mean "everything also follows the branches." This brings us back to a strict position (in support of the first test of R. Kahana's

supposition) as it limits the Mishnah. Now, as the Gemara ends, if the root is outside the boundary of the city of asylum and the branch is inside, the root, of course, is considered as inside. However--and here we depart from the Mishnah--if the root is inside the boundary and the branch is outside the boundary, even the branch is considered as being within bounds. By limiting the Mishnah as well as the other statements purported to R. Judah, R. Ashi destroys Rabba's basic premise that all agree that the blood avenger can kill the manslayer with arrows and stones when he is on the branch which hangs over the boundary. However, R. Kahana is still upheld; for by reading the statements of R. Judah in light of the interpreted meaning R. Judah holds that one follows the branches where it leads to a strict position. That is, the branches will always be within the bounds of asylum just as the root will always be within the bounds of asylum. On the other hand, the Rabbis still hold, as in Mishnah Ma'aser Sheni 3:7, that the boundary line determines what part of the tree is inside or outside the boundaries of asylum.

CHAPTER X

B. MAKKOTH 12B

The Mishnah to the section of Talmud which we now consider contains two laws.

In the first law, we become especially aware of the aspect of punishment which is attached to the institution of asylum. In this law it is stated that "if one [who has been sentenced to the city of asylum inadvertently] kills someone while in that city [of asylum], he [must] seek refuge [by going] from one section [of the city] to another." The logic behind this law, Rashi informs us, is based upon the observation that the manslayer considered cannot leave the city to seek asylum in another city because, if he leaves the city, the blood avenger of the person whom he originally inadvertently killed--the person on whose account he is now in the city--will kill him.¹ While nevertheless at all times in asylum, the manslayer still must perform some act of symbolic flight for his asylum with respect to the second manslaughter to be in effect. We can infer that upon being proven guilty of manslaughter he will be confined to the section of the city to which he fled. This additional confinement--at least in modern terms--connotes an aspect of punishment.

In the second law, the Mishnah considers the case of the Levite living in the city of asylum, a Levitical city, who inadvertently kills someone. Here the Mishnah rules that such a Levite manslayer must seek refuge in another city of asylum. In this case, Rashi informs us, the Levite is allowed to leave his city because he is not there as one seeking asylum,² such a one not being allowed to leave the city.³

There are two parts to the Gemara to our Mishnah.. The first part is not directly related to our Mishnah. The reason that it is seemingly here is because it contains a text that will be utilized as a starting point in the second part of this section of Gemara.

However, this first part is of extreme importance to us because it gives us an insight into the way that the redactor viewed the institution of asylum. While the second part of the Gemara can be presented without the inclusion of the first part, the fact remains that the redactor did include the first part. Therefore, we assume that the first part which we now consider is part and parcel of the redactor's point of view.

The first part of the Gemara contains a Baraitha which interprets Exodus 21:13, "I shall appoint for you a place where he [the manslayer] may flee," in this way: "I shall appoint for you' meaning in your lifetime, 'a place,' meaning in your place, 'where he may flee' implying [since Moses, the party addressed in Exodus 21:13,

never went into Canaan and since in the talmudic scheme God's promise is a fulfilled promise] that the Israelites had a place of asylum to which they could flee while they were yet in the wilderness." The Gemara deduces that the place of asylum was the Levitical camp. On the basis of the inclusion of this Baraitha we maintain that the redactor viewed the institution of asylum as existing before the establishment of the cities of asylum.

In the second part of the Gemara, an expansion of the second law of our Mishnah, we are informed that Exodus 21:13 is the Scriptural authority for the second law of the Mishnah which stated that the Levite who inadvertently killed in a city of asylum, a Levitical city which was his home, had to seek refuge in another city. The biblical provision for a city to which "he may flee" implies that all people were to have a city in which asylum could be obtained; hence, we have a biblical support for the second law of the Mishnah.

The Gemara provides us with a further expansion of the Mishnah and teaches that when a Levite, who happened to be outside of his home city, a city of asylum, inadvertently killed, he could flee to his home city and be protected from the blood avenger. The proof text for this, provided by R. Aha b. R. 'Iqa, is Numbers 25:28, "For he shall dwell in his own [*italics mine*] city of asylum." Therefore, "his own city of asylum" is interpreted to mean the city in which the manslayer first seeks (and finds)

asylum. A city becomes the manslayer's city when he first flees there. Therefore, when the manslayer is a Levite the city to which he first flees--even if it is his home city--becomes "his own city of asylum" and affords him refuge from the blood avenger.

CHAPTER XI

B. MAKKOTH 12B-13A

In this, the final Mishnah of our chapter, laws relating to three distinct topics are presented. The first topic is the question of whether or not a man who is serving his sentence in the city of asylum may receive honors. The law indicates that the bestowing of honors upon a manslayer serving sentence was discouraged. The first part of the law states: "If a manslayer has gone to the city of asylum and the men of the city wish to honor him, he should say to them, 'I am a manslayer.'" The assumption here is that those wishing to honor him will not wish to honor him when, in no uncertain terms, they know that he is a manslayer. The manslayer's statement, then, is designed to discourage those wishing to honor him. However, as the second part of the law states, "if they persist, he [the manslayer] should accept [the honor] since Scripture says [in Deuteronomy 19:4] "and this [admission] is the word of the manslayer." The logic behind this is that once he has made the admission he has discharged his responsibility; for, as our Mishnah understands Deuteronomy 19:4, there is only one thing that the manslayer is obliged to say in the matter, viz., that he is a manslayer.

The second topic is the question of whether or not the cities must pay rent to the Levites for the houses which the manslayers occupy.¹ The issue is disputed, there being two positions given.

R. Judah holds that rent is paid to the Levites, and R. Me'ir holds that it is not.

The third topic is the question of a manslayer's status when his sentence to the city of asylum terminates--through the death of the high priest--and the man returns home. Whether or not he regains his former status and all that appertains to it is the subject of the law, and there are two views. R. Me'ir holds that the manslayer regains his former status. In the language of the Mishnah this is stated as follows: "He returns to the office he formerly held." R. Judah, on the other hand, holds that the manslayer does not regain his former status, i. e., "does not return to the office he formerly held."

The Gemara to our Mishnah is divided into two separate sections, the first covering the second topic of our Mishnah and the second covering the third topic of our Mishnah. In the Gemara, the first topic of our Mishnah is ignored.

In the first section of our Gemara, the discussion centers around an attempt to discover the reasoning behind R. Judah's and R. Me'ir's respective positions concerning the question of whether or not rent is paid to the Levites. Furthermore, the Gemara concerns itself with limiting the

referent of the two positions of our Mishnah to the forty-two additional cities of asylum. On the basis of our reading of the Mishnah, it appears that the dispute over rent applies to all cities of asylum, but the Gemara, by limiting the dispute to the question of rent in the forty-two cities, modifies the law.

The section opens with R. Kahana's assertion that the dispute of the second topic of our Mishnah is over the question of whether or not, in the six cities of asylum, the Levites are paid rent. The ground for the dispute over rent is the interpretation of a phrase in Numbers 35:12, "There shall be for you cities for asylum."

R. Kahana, in trying to reconcile the dispute offers the solution that each side is following its interpretation of the verse and that, therefore, each view is consistent with its interpretation. R. Kahana claims that R. Judah holds that the verse means that the verse provides "cities for you [which are] for asylum" only. Therefore, rent must be paid for the houses since Scripture only provides for asylum being given to the manslayer.

On the other hand, R. Kahana states that R. Me'ir holds that the verse states that "for you are cities [in which you will find] asylum," i. e., that Scripture provides cities "for you" meaning for all your needs. On the basis of this interpretation of Numbers 35:12, R. Me'ir holds that no rent is paid to the Levites. R. Kahana then states that concerning the case of the forty-two additional

cities, of which we read in Numbers 35:6, both R. Judah and R. Me'ir agree that rent is paid.

R. Kahana is overruled by Rabba who categorically states that the expression "for you" certainly means "for all your needs." (On this basis--as proved by the end of Rabba's argument--both sides of the dispute of the Mishnah agree that in the case of the six cities of asylum, to which Numbers 35:6 refers, that no rent is paid to the Levites). Rabba's assertion that "for you" means "for all your needs" is well founded in other places in the Talmud, and it is applied to other verses of Scripture besides Numbers 35:6 for the purpose of deriving practice and law.² Rabba asserts, therefore, that the dispute is over the question of whether or not rent is paid to the Levites in the forty-two additional cities of asylum; and it is based upon each sides' respective interpretation of Numbers 35:12, "and the cities which you shall give to the Levites: the six cities of asylum which you shall give so that the manslayer may flee there [for asylum]; and, in addition to them, you shall give forty-two cities."

Rabba asserts that R. Judah holds that the phrase, "in addition to them you shall give . . ." means you shall give cities which have, as the six cities of asylum, the power to provide asylum. That is--and on this basis R. Judah holds that rent is paid for houses to the Levites in the forty-two cities--the responsibility is only for providing asylum. On the other hand, Rabba asserts that

R. Me'ir holds that the phrase, "in addition to them you shall give . . . " means you shall give cities which are as the former in all respects. This position is derived from an analogy: just as the six cities are "for all your needs" (as Numbers 35:6 shows) so should the forty-two cities be for all your needs. Hence, R. Me'ir holds that no rent is paid even in the forty-two cities. Thus, regarding the question of rent in the six cities, Rabba states both sides agree that no rent is paid to the Levites, the controversy concerning the forty-two additional cities only. This clarification remains unchallenged.

The second section of the Gemara to our Mishnah deals with the question of a manslayer's status when he becomes allowed to leave the city of asylum due to the death of the high priest, and it tries to discover the reasoning behind the differing views of our Mishnah.

The Gemara to this section opens with a Baraitha which covers a situation paralleling the situation of our Mishnah. The Baraitha concerns itself with the question of the status of a Hebrew slave when he is manumitted: does he or does he not return to his former pre-slave status when his servitude ends? The disputants of this Baraitha are the same as those of our Mishnah, R. Judah and R. Me'ir.

We consider now the contents of the Baraitha which is based upon Leviticus 25:41, "And he shall return to his family, and to the holdings of his fathers he shall return,"

which in context refers to the Hebrew slave upon manumission. R. Judah holds that the meaning of this verse is that the manumitted Hebrew slave returns to his family but not to the station occupied by his father, i. e., he does not regain his former status. It appears that R. Judah limits this text by the terms of an earlier assertion, Leviticus 25:10, in which "possessions" and "family" are mentioned while "fathers" is not.³ R. Me'ir, on the other hand, holds on the basis of Leviticus 25:41, that the manumitted Hebrew slave also returns to the station occupied by his fathers, i. e., that he regains his former status, because "to the possession of the fathers he shall return," means that he shall return to be exactly as his fathers.

The Gemara states that R. Me'ir's reasoning behind his position of the Mishnah is that the same holds true regarding the manslayer whose sentence has ended as holds true in the case of the manumitted Hebrew slave. Since Numbers 35:28 states "he shall return," as does Leviticus 25:41, the terms of the case of the manslayer whose sentence has ended are included in the case involving the manumitted slave. (This is a gezerah shawah argument. We learn the meaning of a term from one context and apply it to another.)

The Gemara calls for the complete argument, the source of the previous statement, that we might in fact know what the reasoning behind the positions of R. Judah and R. Me'ir concerning the manslayer whose sentence ended

are. Up to this point it is only assertion that R. Me'ir derives his view regarding the status of the manslayer whose sentence has ended from the status of the manumitted slave from a gezerah shawah. Furthermore, it has not been shown what the reasoning behind the view of R. Judah is. Therefore, the Gemara now gives a Baraitha, an authoritative source, which specifically shows the reasoning behind the positions of the two men, based upon the interpretation of Numbers 35:28, "[After the death of the high priest], the manslayer shall return to the land of his possession." It is from this verse that the respective positions of R. Judah and R. Me'ir are derived.

R. Judah holds that this verse means precisely what it says: the manslayer returns only to the land of his possession. Since it is not stated to the contrary, the manslayer does not return to the station occupied by his fathers, i. e., to the honors of some high office conferred upon him by others.⁴ On the other hand, R. Me'ir holds that the manslayer does return to the station occupied by his fathers, i. e., to the office he previously held. He derives this position by gezerah shawah from the case of the manumitted slave. Just as the phrase, "he shall return," of Leviticus 25:41, means that the person about whom Scripture is speaking (the slave) returns to the station occupied by his fathers, so does the phrase, "he shall return," of Numbers 35:28 mean that the person about whom Scripture is speaking, the manslayer, shall return to the

station occupied by his fathers.

Through the means of this Baraitha, then, the reason behind the differing views of the Mishnah is established and ascertained by the Gemara which clarifies and upholds here, as in the previous section of Gemara, both views of the Mishnah.

CHAPTER XII

CONCLUSIONS

Our analysis has revealed to us some very important details about the second chapter of tractate Makkoth of the Babylonian Talmud.

From the standpoint of structure, we have seen--to a great extent--the way in which the Gemara continued to build up the Oral Law upon the foundation of the Mishnah. In each section of Mishnah, our method was to determine precisely what the interest of the Gemara was.

Several tendencies were apparent. First, the Gemara as often as possible tried to uphold the Mishnah against baraitoth and against amoraic objections. Second, we note, whenever the Gemara opened with a critical remark, it was almost always rejected. Finally, just as there was a tendency to vindicate the Mishnah, there was a tendency to vindicate the Amoraim.

Most of the material that was included in the Gemara fell into certain categories. The first was that body of material that provided us with the source or the authority of the Mishnah. This material was called for whenever it was not self-evident what the basis for the law of the Mishnah was. The second was that body of material which provided us with an extension or an expansion of the Mishnah. This material consisted mainly

of baraitoth which expanded the material of the Mishnah, but there was, as we saw, a great amount of amoraic material as well that did the same thing. The third was that body of material which provided us with interpretations of the various mishnayoth. This material, while it contained tannaitic elements, was mainly amoraic. Finally, there was that body of loosely related material. This material fell into two categories: material under the topic of the Mishnah and material not under the topic of the Mishnah. We note that the material in the last category always, however, had a link with some part of the previous discussion.

From the standpoint of content, we have seen a fairly systematic development of a treatise on inadvertent homicide. Though the material was out of order from a logical point of view, the material was nevertheless present. Among the things that we found were the following: we saw how the institution of asylum, as seen through the eyes of the redactors of the Gemara who saw fit to include the material they did, began in biblical time; we saw how inadvertent homicide was defined through cases, who would have been adjudicated a manslayer and who would have not; we noted how the cities of asylum were set up, where they were located, and what they contained; we learned what their boundaries were and how far they extended; we saw the factors that determined how long the manslayer had to remain in the city of asylum; we saw how

every attempt was made to protect the manslayer; we saw what the Gemara felt the conduct of a man in the city of asylum ought to have been; and, finally, we learned what the Gemara felt regarding a manslayer's lot upon his release.

With this our analysis draws to its close. It is our fervent hope that this work will at least provide a key for opening a new door to the understanding of that magnum opus which has had such a profound influence upon Jewish life throughout the ages. If I may paraphrase a statement of Hillel, let us now go forth and learn.

CHAPTER I

¹Rashi ad Makkoth 7a.

³The term, דבר ידוע, is generally held to be a reference to a Baraitha considered by the Talmud to be well known. However, this is only conjecture. Nevertheless, in this thesis, we shall refer to a דבר ידוע passage as a "well-known Baraitha" so that the reader will be able to differentiate a דבר ידוע passage from a Baraitha introduced by any other expression.

⁴Rashi ad Makkoth 7b.

⁵Ibid.

¹Makkoth, trans. H. M. Lazarus (London: The Soncino Press, 1935), p. 42.

²Ibid., pp. 42-43.

¹Makkoth, trans. H. M. Lazarus, p. 47.

²See Lev. 22:6-7.

³Rashi ad Makkoth 8b.

⁴See above, p. 32.

⁵Ibid., pp. 32-33.

CHAPTER IV

¹M. Mielziner, Introduction to the Talmud (New York and London: Funk and Wagnalls Company, 1903), p. 222.

²Rashi ad Makkoth 9a.

³See above, p. 6.

⁴See above, p. 9.

⁵Makkoth, trans. H. M. Lazarus, p. 55.

⁶Rashi ad Makkoth 9a.

⁷Ibid.

CHAPTER V

¹Rashi ad Makkoth 9b.

²Ibid.

³Ibid.

⁴This is the reading that both Rashi and Sirkes adopt. See both men ad loc.

⁵Ibid.

⁶Rashi ad Makkoth 9b.

CHAPTER VI

¹Rashi ad Makkoth 9b.

²Makkoth, trans. H. M. Lazarus, pp. 60-61.

³Ibid., p. 60. This is the reading that Lazarus adopts.

⁴Rashi ad Makkoth 10a.

⁵Ibid.

⁶Rashi ad Makkoth 10b.

⁷Rashi ad Makkoth 11a.

⁸Ibid.

CHAPTER VII

¹Rashi ad Makkoth 11a.

CHAPTER VIII

¹Most texts other than the standard Talmud text which we are using read the last point of R. Akiba, "while anybody else is not [*italics mine*] held liable [for killing him]," explaining this to mean that anybody else is forbidden to kill him but nevertheless is not liable. It is generally held that our text has been amended here here by Solomon Luria. However structure seems to indicate that the emendation is proper. If a man is forbidden to kill another, there is an implied liability if he does kill. Conversely, on what ground can we say that a man is forbidden to kill but not liable for the killing?

²Rashi ad Makkoth 11b.

CHAPTER IX

¹Rashi ad Makkoth 12a.

²Ibid.

³Rashi ad Makkoth 12b.

CHAPTER X

¹Rashi ad Makkoth 12b.

²Ibid.

³See above, pp. 95-96.

CHAPTER XI

¹Rashi ad Makkoth 13a.

²See Beza 28b, Sukkah 40a, Megillah 7b, and Bava Qamma 102a.

³Makkoth, trans. H. M. Lazarus, p. 89.

⁴Ibid.

BIBLIOGRAPHY

BOOKS

- Ben Shelomoh, Menahem Hame'iri. Beth Habehirah 'al Masekheth Makkoth. New York: Rabbi S. Waxman, 1952.
- Biblia Hebraica. Edited by Rudolf Kittel. Stuttgart: Württembergische Bibelanstalt, 1961.
- Blackman, Philip. Mishnayoth. Vol. IV: Order Nezikin. London: Mishnah Press (L. M. Schoenfeld), 1954.
- Bokser, Ben Zion. The Wisdom of the Talmud. New York: The Philosophical Library, 1951.
- Goldin, Human E. Hebrew Criminal Law. New York: Twayne Publishers, Inc., 1952.
- The Holy Scriptures. Philadelphia: The Jewish Publication Society of America, 1954.
- Hyman, Aaron. Toldoth Tannaim Ve'amoraim. 3 vols. Jerusalem: Kiryah Ne'emanah, 1964.
- Jacobs, Louis. Studies in Talmudic Logic and Methodology. London: Valentine, Mitchell, and Co. Ltd., 1961.
- Jastrow, Marcus. A Dictionary. New York: Pardes Publishing House, Inc., 1950.
- Kohn, P. Jacob. Sefer Hasimanim Hashalem. London: Hamadpis, 1952.
- Kolatch, Alfred F. Who's Who in the Talmud. New York: Jonathan David, 1964.
- Makkoth. Translated by H. M. Lazarus. London: The Soncino Press, 1935.
- Mandelkern, Solomon. Qonqordenzia Latanakh. Tel Aviv: Schoken, 1962.
- Melamed, E. Z. Eshnav Hatalmud. Jerusalem: Kiryath Sefer, 1963.
- Mielziner, M. Introduction to the Talmud. New York and London: Funk and Wagnalls Company, 1903.

- The Mishnah. Translated by Herbert Danby. London: Oxford University Press, 1958.
- Mishnayoth. 6 vols. New York: Mefize Torah, 1954.
- Rabbinovicz, Raphaelo, and Ehrentreu, Henricus. Diqdugei Sofrim. 6 vols. Przemyśl: Zupnik, Knoller, and Wolf, 1897.
- Shishah Sidre Mishnah. 6 vols. Jerusalem: Musad Bialik (and Tel Aviv: Devir), 1959.
- Sifre d'vei Rav. Edited by M. Friedman. Vienna: (Publisher Unknown), 1884.
- Sofer, Samuel Benjamin. Divre Sofrim. 3 vols. Jerusalem: Hatehiah Ltd., 1958.
- Stern, Tibor H. The Composition of the Talmud. (City Unknown): Hanan Foundation, 1959.
- Strack, Hermann L. Introduction to the Talmud and Midrash. Cleveland and New York: The World Publishing Company, 1959.
- Talmud Bavli. 20 vols. New York: M'oroth Publishing Corp., 1959-62.
- Talmud Bavli. 13 vols. Translated by Lazarus Goldschmidt. Berlin: S. Calvary and Co., 1897.
- Tchernowitz, Chaim. Toldoth Hahalakhah. 4 vols. New York: The Committee for the Publication of Rav Tzair's Collected Works, et. al., 1934-1950.
- The Torah. Philadelphia: The Jewish Publication Society of America, 1962.
- Unterman, Isaac. The Talmud. New York: Record Press, 1952.
- Weiss, Abraham. Leheker Hatalmud. New York: Feldheim, 1954.
- Zuckermann, M. S. Tosephta. Jerusalem: Wahrman Books, 1963.

ARTICLES

- Ginzberg, Louis. "Asylum--In Rabbinic Literature." The Jewish Encyclopedia, 1902, II, 257-259.

Ginzberg, Louis. "Avenger of Blood-In Rabbinic Literature." The Jewish Encyclopedia, 1902, II, 345-346.

Prince, John Dyneley. "Avenger of Blood-Biblical Data." The Jewish Encyclopedia, 1902, II, 344-345.

Toy, Crawford Howell. "Asylum-Biblical Data." The Jewish Encyclopedia, 1902, II, 256-257.