

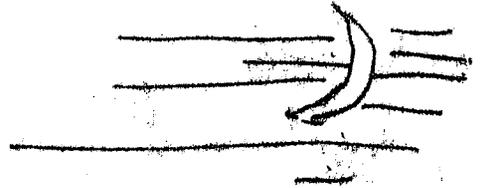
THE
CHAIN OF
TRADITION
SERIES

Volume 1

*Dr
Nur and Tizza
will love
Dad*

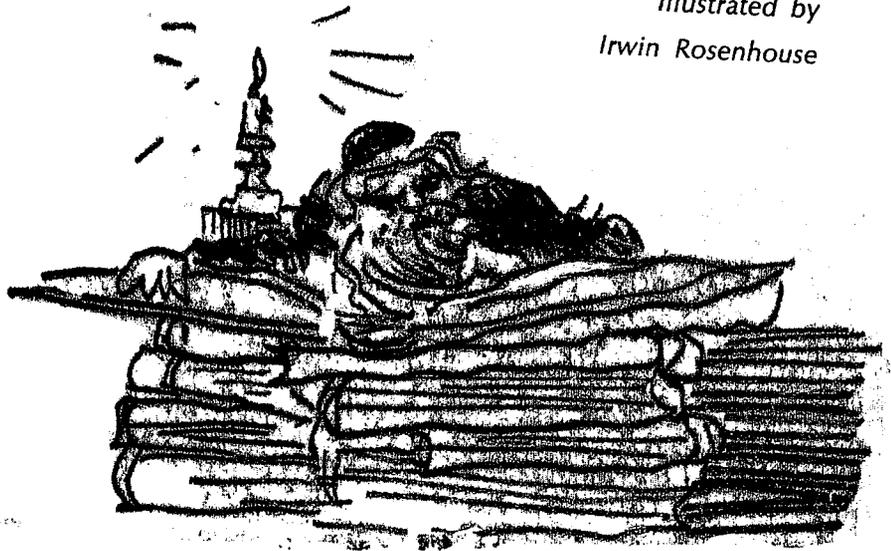
THE
CHAIN OF
TRADITION
SERIES

Volume I: Jewish Law



*Illustrated by
Irwin Rosenhouse*

THE
CHAIN OF
TRADITION
SERIES



Jewish Law

BY LOUIS JACOBS

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for David

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Introduction

JEWISH law is based on a central idea. Though ideals such as justice and mercy and holiness are very wonderful, to have any impact on human life they must be expressed in detailed action. For instance, the great Hebrew prophets preach to their people, and through them to us, that we should practice justice. Very well, we say, we are ready to heed the lesson. How do we go about it? For the answer to this it is not to the prophets that we can go but to those who followed them and strove mightily to put their ideas into operation. It is the Rabbis who answer in detail such questions as: what is a fair price? how can cheating be avoided? how should men conduct themselves in their daily business affairs? how should the Sabbath be made holy? how should a Synagogue be built? and so on through the whole range of Jewish experience.

Naturally not all the answers found in the older sources are appropriate to our day. In some of the texts presented here, for example, there are references to slaves because the laws in them came from an age when slavery had not yet been banished from human society. Even from these texts we can learn much. We can see, among other things, that the Jewish teachers tried to soften the rigors of slavery and taught that the slave should be treated as a human being. But, for all that, these texts have only academic

interest nowadays since, thank God, in our world crude slavery is no more.

The picture which emerges from a study of Jewish law is one of ripe wisdom, the experience of generations of Jewish teachers, making itself felt in Jewish life. Not everything that was considered wise in former ages is so considered today. But what has come down to us in the sources represented by our texts is enough to inspire us to continue the creative task of translating Jewish ideals into concrete practices for the ennoblement of human life.

The material presented in this book is legal material, that is to say, it concerns itself with right and wrong, with what should be done and what should not be done. Questions of this kind are subtle. It is not easy to draw the fine lines which mark off the things to be done from the things to be rejected. Much argument is needed in order to arrive at a correct definition of the law and lawyers may frequently disagree on what the law is in a particular instance.

The really interesting aspects of a legal debate or discussion are to be found in the reasoning and argumentation rather than the final decision. You are advised therefore to be in no hurry to reach the end of any argument presented in these pages but to follow it through carefully, weighing up all the pros and cons. What makes a debate enjoyable is not the final vote. The fun of the debate consists in the skill and eloquence with which the contestants state their case.

This book, then, is to be read less like a novel than a text-book of mathematics. "Reading" is probably the wrong word here. The book should be "studied." Go over the various steps of each argument and ask yourself if you agree with them. It will be of help if the members of a class take sides and try to thrash the matter out for themselves. It should not be forgotten that practically all the cases mentioned in the book were debated by keen minds over many years. To obtain the best appreciation of the points raised a certain amount of reflection is demanded. "Go over it again and again" was the advice of the Rabbis of old to their pupils.

Furthermore, many of these discussions were originally verbal and were not written down until later. It is as if you are presented with the written reports of proceedings in a court of law. To obtain the best advantage of the material it will be necessary for you to reconstruct in your imagination the drama of the actual cases as they came before the courts.

This book contains selections from each of the main sources of Jewish law: (1) The Halakhic Midrashim; (2) The Mishnah; (3) The Jerusalem Talmud; (4) The Babylonian Talmud; (5) The Codes; (6) The Responsa. Each section is prefaced by a note describing its nature e.g. the section on the Mishnah is prefaced by a note describing what the Mishnah is, its date, authorship and so forth. In each section there are a number of items chosen to demonstrate the particular approach. The text is given in translation together with a point by point comment. Although the original texts have numbers indicating the divisions, these have not been utilized. The original text numbers can be easily determined by referring to the source listed at the beginning of each chapter.

When using the book you should first read the short note at the beginning of the section which contains the item you are studying. If, for example, you wish to read one of the items in the section on Codes, first read carefully the note which tells you what the Codes are. Then read the particular text, making sense of it with the aid of the commentary.

It will be found useful to have a Bible ready to hand and to look up in the Bible all the Biblical references in the text. The translation of Biblical texts has sometimes been changed slightly from that in the standard versions in order to make better sense of a particular Rabbinic comment. Sometimes the Rabbis had their own way of looking at a Biblical text.

Remember that most of these texts are hundreds of years old and have to be placed in a particular historical context, that is to say, they have to be seen against the background of their times. But most of the issues discussed take us to the heart of the Jewish ethical and legal approach and can, without too much difficulty, find their application in the kind of world in which we live.

The book can be studied systematically in the order in which the items are arranged, but if the reader so desires he can pick out any item which seems interesting to him and study it on its own. But the note to the section of which it is part should be read first of all. There is no need to worry about the identity of the various Rabbis and teachers mentioned in the text. These are fully discussed in the comment to the text. For further biographical information about the Rabbinic heroes it is a good idea to read the relevant articles in the Jewish Encyclopedia. There is an occasional overlapping of comment, i.e. some points have been made more than once in

comments on different texts but this is to enable the reader to study any single text without having to read the whole book.

The aim should be, however, eventually to read through the whole book. If this is done it will be found that a fairly clear picture has been obtained of how Jewish law has grown through the ages and how it has operated in Jewish life.

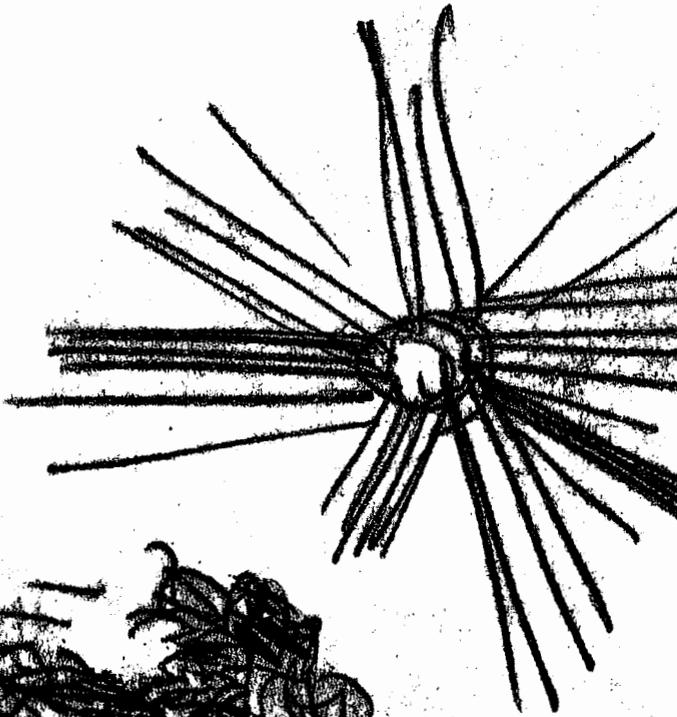
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The Halakhic Midrashim

THE HEBREW word *Halakhah* (hence the English form *Halakhic*) comes from the root *halakh* which means "to go." It represents the way in which a Jew should conduct himself, the rules and patterns of Jewish behavior and consequently it is a term for "Jewish law," for the legal side of Judaism. There is another Rabbinic term *Aggadah* (from a root meaning "to tell") and this represents all the stories, history, philosophy, folk-lore, science and the like found in Rabbinic literature. In short *Aggadah* embraces all the non-legal aspects of Judaism, *Halakhah* all the legal side of Judaism.

The word *Midrash* (plural *Midrashim*) comes from a root meaning "to inquire" or "to search" or "to examine." The basic idea is the examination of Scripture to make it yield more than lies on the surface. For instance, a close examination of the Scriptural references to the Sabbath will give us a clearer idea of what is meant by "work" on the Sabbath than a merely superficial reading would do. The great teachers of Judaism engaged for centuries in this kind of "search" or "inquiry" and their work has been collected in various forms. These works are known as the *Midrashim*.

Most of the Midrashim we now have are *Aggadic* in nature. But the earliest and those enjoying the greatest authority are *Halakhic*, hence the term *Halakhic Midrashim*. These date from the second century of the present era and earlier. The Rabbis of this period, whose views are found in the *Halakhic Midrashim*, are known as the *Tannaim* (plural of *Tanna*, "a teacher"). This word *Tannaim* is an Aramaic one, Aramaic being a sister language of Hebrew (like Dutch and German) and widely spoken in this and the next period. Hence another name for the *Halakhic Midrashim* is the *Tannaitic Midrashim*.

The period of the *Tannaim* is the first two centuries of the present era but the Midrashic process itself is much earlier going back to the time of Ezra, the fifth century B.C.E. Indeed, some of the material in these *Tannaitic Midrashim* is much earlier than the period of the *Tannaim*.

As will be seen from the examples given in this section, the *Halakhic Midrashim* are in the form of a running commentary to the legal portions of the Five Books of Moses. Verse by verse the passages are examined and the opinions of the Rabbis, often differing opinions, are quoted. The whole process has the aim of connecting the law to the Scriptural verse or of reading it out of the Scriptural verse.

There is no space in this book to consider in detail all the material which we now have belonging to the *Halakhic Midrashim*. Instead the following selections are from the three main *Halakhic Midrashim*—*Mekhilta*, *Siphra* and *Siphre*. These three words are all Aramaic and mean: *Mekhilta*, "measure"; *Siphra*, "the book"; *Siphre*, "the books." The *Mekhilta* is a running commentary on the book of Exodus, the *Siphra* on the book of Leviticus, and the *Siphre* on the books of Numbers and Deuteronomy. (There is no *Halakhic Midrash* on Genesis because there is hardly any legal material in this book.)

The punishment for stealing

The different classes of stealing and their appropriate punishments.

When a man steals an ox or a sheep, and slaughters it or sells it, he shall pay five oxen for the ox, and four sheep for the sheep.

EXODUS 21:37

The teachers mentioned in this passage belong to the first (Johanan son of Zakkai) and the second centuries.

The slaughterer and the seller were already included in the verse: “If the thief is caught, he shall pay double” (Exodus 22:6). But now Scripture excludes these two cases from that general rule in order to be stricter with them for they have to pay four or five times as much. That is why this passage, Exodus 21:37, is recorded in the Torah.

Scripture says that a thief has to pay double the amount he had stolen when he is caught. This rule would have embraced the case of the thief who slaughters or sells the animal he has stolen. But Scripture states this law separately to teach that for slaughtering and selling the penalty is more severe and is four or five not merely double.

“An ox or a sheep”—to teach that he is to be punished for each of them. “And slaughters it.” I know only if he slaughters it, how do I

know that the same applies if he sells it? Because Scripture says: “or sells it.” But even if Scripture did not state it explicitly I would have argued: If he is punished when he slaughters it, when he sells it he should certainly be punished. But if this were so you would have derived the punishment by an argument and therefore Scripture states explicitly: “or sells it,” to teach you that one does not arrive at a legal punishment merely by means of an argument. Another explanation: Slaughtering is compared to selling and selling to slaughtering. Just as the penalty for selling only takes effect when he removes the animal from the domain of its owner so, too, the penalty of slaughtering only takes effect when he removes the animal from the domain of its owner. Further, just as the case of selling involves an animal which may be eaten, so too the case of slaughtering only applies to an animal which may be eaten. And just as the case of selling involves an animal from which it is permissible to have benefit, so too the case of slaughtering only applies to an animal from which one may have benefit. And conversely, just as the case of slaughtering cannot be undone, so too the penalty for selling is only when the sale is permanent. And just as the case of slaughtering is total, so too the case of selling only applies where the sale is total.

An ox or a sheep means that the penalty is for each and not only when he slaughtered or sold an ox and a sheep. The Mekhilta now argues that even if Scripture had not stated explicitly the case of selling I would have known that the penalty applies in this case, too. For surely a greater penalty should be given to the man who sells it and gains money thereby than to the man who slaughters it and gains no money. If, then, Scripture had simply recorded the case of slaughtering, we would know ourselves that the same penalty applies to the case of selling. Why then should Scripture have to state it explicitly? To this the answer is given that the case of selling is dealt with explicitly in Scripture to teach us that logical argument, strong though it is, should not be used as the sole basis for inflicting a penalty on someone. After all, one's argument, however convincing, may be mistaken. Consequently, Scripture is not content with giving us a basis for argument but states the law against selling explicitly. Another reason for Scripture stating both slaughtering and selling is then mentioned. This is so that we might compare the two and derive some new rules by the comparison. The principle here is that when Scripture compares two cases in the same verse it can

logically be assumed that whatever is true of one case is also true of the other. The following examples are the particular points of comparison.

Obviously a man cannot be convicted of the crime of selling until he has actually sold what he has and he then removes it from its original owner's domain. Supposing a man slaughters his neighbor's animal while it is still on his neighbor's land? The comparison of slaughtering and selling is to teach that just as the law for selling the animal only applies when it has been removed from the owner's domain, so too the law for slaughtering. Furthermore, selling obviously involves an animal which may be eaten. For nowhere in Scripture do we find a law which states that an act of selling an animal renders it forbidden to eat or to have benefit from it. By the same token the law of slaughtering only applies if, after the slaughter, the animal can be eaten and benefit can be had from its meat. This excludes a diseased animal which is terefah—*forbidden to be eaten*—and an animal which killed a man, from which no benefit may be derived when it is slaughtered i.e. its meat must not be sold.

However just as slaughtering is compared to selling, so too selling is compared to slaughtering. A slaughtered animal cannot be brought back to life. The act is irrevocable. Supposing a man sold an animal for a short period i.e. he sold its use for thirty days. Such a sale would not warrant the penalty of four and five because it is not comparable to the irrevocable act of slaughtering. Similarly, one can only slaughter the whole of an animal not part of it. By the same token the penalty of four and five is only demanded where the whole of the animal was sold but not where a part of it was sold.

Another explanation: “When a man steals.” You would think that animals set aside as Temple sacrifices are included in this law. So then if a man stole them from the Temple and slaughtered them outside the Temple area he must pay four or five. Scripture, however, in the book of Leviticus, makes an exception in the case of slaughtering Temple animals. It declares that in their case the penalty is a far stricter one than paying four or five and is that of being “cut off.” Now one could have argued: If in the case of slaughtering Temple animals there is the stricter penalty of being cut off, how much more should it also include the lighter penalty of four and five? This is why Scripture says: “This is what the Lord hath commanded” (Leviticus

17:2). The law concerning Temple animals is the law of “cutting off.” It is not the law of monetary restitution.

Leviticus 17:1-7 says that if a man slaughtered animals set aside for Temple sacrifices outside the Temple area he is to be punished with the penalty of being “cut off from his people.” This means a kind of death sentence, not by the human court but at the hand of God at His own time and in His own way. The Mekhilta states here that one might have argued that in addition to the severe penalty of being cut off there is also the penalty of four and five. But in the passage dealing with Temple sacrifices slaughtered outside the Temple Scripture says: “This is what the Lord hath commanded,” as if to say this penalty and no other in addition.

“He shall pay five oxen”—that is four and the original ox. “And four sheep”—that is three and the original sheep.

One might have understood the term “five” to mean five in addition to the value of the original animal and “four” to mean four in addition to the original animal. The Mekhilta states that this would hardly be the proper meaning of “four” and “five.”

Rabbi Meir said: Come and see how much work is valued by God even though He brought the world into being by merely saying a word. The penalty for the ox which does work is five while the penalty of the sheep which does no work is only four. Rabbi Johanan son of Zakkai said: The Holy One, blessed be He, is concerned about the dignity of His creatures. In the case of an ox, which walks on its own, he has to pay five, but in the case of a sheep, which he has to carry, he only has to pay four.

The question now discussed is why should the thief have to pay more for an ox than for a sheep, why “five” for the ox and only “four” for the sheep? Two reasons are suggested. The ox is an animal which does work while the sheep is kept for its wool and mutton but not for its work. Scripture so values work that it always places a higher valuation on a working animal such as an ox. The second reason is that the thief when stealing the ox did not have to lower his dignity. But the thief when stealing a sheep had to carry it on his shoulder and this lowered his dignity. Scripture respects human dignity, even that of a thief, and therefore releases the man who stole

the sheep from part of the payment because he has already been partly punished in his loss of dignity.

Rabbi Akiva said: “for the ox”—“for the sheep”—this is to exclude a beast of chase. For we might have argued that restitution has to be made when a domestic animal is stolen and restitution has to be made when a beast of chase is stolen. Therefore, it might have been argued, just as the restitution in the one case involves the penalty of four or five, so, too, in the other case. No, the two cases are unlike one another, for the domestic animal can be offered on the Temple altar as a sacrifice but the beast of chase cannot be offered on the altar so it does not warrant the penalty of four or five. But a domestic animal with a blemish which cannot be offered on the altar still warrants the penalty of four and five! This would be an argument to warrant the penalty of four and five for the beast of chase even though it cannot be offered on the altar. No, even though a domestic animal with a blemish cannot be offered on the altar it belongs to a species which can, whereas the beast of chase cannot as a species be offered on the altar. Scripture therefore says: “for the ox”—“for the sheep”—and excludes the beast of chase.

A “beast of chase” is an animal such as a deer. These may be eaten but were never offered on the altar in the Temple. On the basis of this the argument is developed to exclude them from special penalty. To make absolutely sure of this according to Rabbi Akiva, Scripture states “for the ox”—“for the sheep”—to suggest only for these.

Moral human relations

The laws of living with others ethically.

Ye shall not steal; neither shall ye deal falsely, nor lie to one another. And ye shall not swear by My name falsely, so that thou profane the name of thy God: I am the Lord. Thou shalt not oppress thy neighbor, nor rob him; the wages of a hired servant shall not abide with thee all night until the morning. Thou shalt not curse the deaf, nor put a stumbling block before the blind, but thou shalt fear thy God: I am the Lord.

LEVITICUS 19:11–14

“Ye shall not steal.” Why is this stated? Because Scripture states with regard to theft that the thief has to pay double (Exodus 22:3). That is the penalty. How do we know of the prohibition? Therefore Scripture says here: “Ye shall not steal.”

The Rabbis believed that Scripture nowhere states a penalty for an offense unless it also somewhere warns Israel against committing the offense.

“Ye shall not steal.” This applies even if you steal only for the purpose of causing the victim anxiety; or if your intention is to pay double or four or five. Ben Bag Bag says: Do not even steal back from a thief that which he has stolen from you lest you appear to be a thief.

The Siphra interprets the commandment to include cases of theft which are still forbidden even though they might not be considered as real cases of theft. For instance, supposing a man steals, not to keep that which he has stolen, but simply to make the victim anxious and to return the stolen goods eventually; this is still theft and forbidden. Or take the law that if a thief is caught he has to pay double the amount or if he slaughters or sells an ox or a sheep that he has stolen he has to pay four or five times as much. Supposing, then, a man steals in order to benefit the victim by letting him have either double or four or five times the value eventually? The Siphra rules that this, too, is forbidden. Ben Bag Bag was a first century Palestinian teacher. (Some suggest that he was a convert to Judaism and that his curious name is to be explained in this manner: Bag is formed of the letters bet and gimmel which equals two and three. Now "five" is the letter hé which was added to the names of Abraham and Sarah. Hence, since a convert to Judaism is said to be the "son of Abraham and Sarah" he would have been called Ben (the son of) Bag Bag. In fact, there is another teacher of the same period called Ben Hé Hé!) According to Ben Bag Bag it is forbidden to steal even from a thief and even that which the thief has himself stolen. If a man can identify his property he should bring the case before the courts and not take the law into his own hands. Authorities in the Talmud in a later generation said, however, that if there is no possibility of getting redress in the courts then he may take the law into his own hands and steal his own property back from the thief.

"Ye shall not steal: neither shall ye deal falsely." Why is this stated? Because when Scripture says: "And deal falsely therein" (Leviticus 5:22) we are told the penalty (restitution plus a one-fifth penalty; Leviticus 5:27), but how do we know the prohibition? Therefore Scripture says here: "Ye shall not steal; nor lie to one another."

See the comment on the first paragraph.

"To one another" ("a man to his neighbor"). I only learn that it applies to a man offending against a man. What if a man offends against a woman? Therefore Scripture says "his neighbor" to include everyone.

Obviously the term "man" is not intended to exclude the application of the law to women. A woman is just as much a fellow-citizen, a "neighbor," as a man.

"Ye shall not steal; neither shall ye deal falsely, nor lie to one another. And ye shall not swear by My name falsely." Which means that if you do steal you will eventually deal falsely and eventually lie and eventually swear falsely.

This explains itself. The Siphra takes each of the offenses recorded as leading on to the others.

"And ye shall not swear by My name falsely." Why is this stated? Because Scripture states: "Thou shalt not take the name of the Lord thy God in vain" (Exodus 20:7). From this I might have argued that the penalty only applies when the special Divine name has been used. How do we know that it applies to any of the other names of God? Therefore Scripture states here: "And ye shall not swear by My name" which means by any name I have.

The "special Divine name" is the four-letter name translated as Lord. In the third of the Ten Commandments this is the term used. Hence the Siphra states that it might have been argued that the full penalty is only where this special name is used. But since in our verse there is simply a reference to "My name" it includes any name by which God is known e.g. God, Almighty, and so forth.

"So that thou profane the name of thy God." This teaches us that a false oath is a profanation of God's name. Another explanation: if you swear falsely your life becomes profane to the wild beasts.

Scripture says: "And ye shall not profane My holy name; but I shall be hallowed among the children of Israel" (Leviticus 22:32). The rabbis say that there are two ideas here: 1) The avoidance of H̄illul Ha-Shem (the profanation of the Name); 2) Kiddush Ha-Shem (the sanctification of the Name). H̄illul Ha-Shem means to do anything which brings religion into disrepute e.g. if a man so behaves that people despise him and the religion he adheres to because it has not succeeded in making him a better

person. Kiddush Ha-Shem means behaving so well that people say: *If this is the kind of person the religion produces it must be supremely worthwhile. The second explanation here is rather difficult. It is probably based on the idea that while God has ordered the animals, as it were, to refrain from harming man, when men sin He does allow the animals to do harm. Furthermore when man sins he causes the world to be devastated and he cannot build a civilized life.*

It is in reference to this that Scripture says: “Therefore hath a curse devoured the earth, and they that dwell therein are found guilty; Therefore the inhabitants of the earth waste away, and men are left few” (Isaiah 24:6).

A verse from Isaiah is quoted in support of what has been said in the previous comment.

“Thou shalt not oppress thy neighbor.” It might have been argued that this applies also to someone who says of a certain man that he is not powerful when in reality he is, or that he is not wise when in reality he is, or that he is not rich when in reality he is. Scripture therefore says “nor rob him.” Just as robbery refers to a case where money is involved, so too oppressing refers to a case where money is involved. Which case is that? Keeping back the wages of a hired servant. “The wages of a hired servant shall not abide with thee all night until the morning.” I know only that the law applies to the wages of a human being. How do we know that it also applies to the rental fee of an animal or of vessels or of land? Scripture therefore says “Shall not abide with thee” to include anything for which payment is due.

The beginning of this paragraph is not at all clear in the original text. Our translation follows the suggested reading of the famous scholar, the Gaon of Vilna (eighteenth century). The meaning is that the full penalty of theft only applies to theft of money or property, not to the theft of a man’s reputation. This is, of course, a legal distinction. Morally to rob a man of his reputation may be much worse but such theft is difficult to put right in a court of law.

The second part of this paragraph states that any wages owed to

a person falls under the law of keeping back wages, even wages for the hire of tools or land or other property.

“Until the morning.” This teaches that he does not offend against the law until the first morning after the work has been done. I might have supposed that the law applies even when the hired servant did not demand his wages. Therefore Scripture says “with thee.” I only object, says God, to wages you hold back of your own free will.

This paragraph states two things. First that he has the whole night to pay and does not offend against the law until the morning. Secondly, if the hired workman does not mind being owed the money and does not claim it right away, his employer commits no offense if he does not pay him right away. This is derived from the words “with thee” which suggest that the employer keeps the money back when requested by the workman.

I might have supposed that the law applies even where he gave the workman credit at a bank or a shop. Therefore Scripture says “with thee”—it only applies if the wages were kept back willingly.

Since the offense is only where the employer willfully intended to postpone payment it does not apply if, instead of money, he gave him credit at a bank and at a shop i.e. to buy goods there for his needs and charge the bill to the employer. The giving of the credit note then becomes the payment of the wages. Jewish law has it, however, that he may only do this with the consent of the employee, otherwise he must give him money not goods.

“The wages of a hired servant shall not abide with thee until the morning.” From this I learn only that a man engaged to work by day has all the night to demand his wages. How do we know that a man who works at night has all the next day to demand his wages? Therefore Scripture says: “In the same day thou shalt give him his hire” (Deuteronomy 24:15).

The point here is that there are two verses in Scripture regarding the hired workman. One deals with a man hired for work during the day and he must be paid the next night. The other deals with a man hired to work during the night and he must be paid the next day.

“Thou shalt not curse the deaf.” I know only that it is forbidden to curse a deaf man. How do we know that it is forbidden to curse any man? Therefore Scripture says: “Nor curse a ruler of thy people” (Exodus 22:27). If that is so why is a deaf man specified? To teach you that the law only applies to one who is like the deaf man, namely one who is alive. But the law does not apply to the dead.

The plain meaning of the verse is that it is forbidden to curse even a deaf man who cannot hear the curse. But it might have been argued that it is only forbidden to do this to one who cannot hear and cannot retaliate. Therefore the Siphra proves that it applies to others as well since there is another verse forbidding the cursing of a ruler. The principle here is that since a ruler and a deaf man are mentioned and are so different, Scripture intends the prohibition to apply to that which both have in common, namely their humanity. It follows that the law applies then to every human being. The Siphra takes the two verses together as meaning that it is forbidden to curse anyone, but that the two cases of ruler and deaf man are specially singled out. The paragraph concludes that when one speaks of a deaf man one must be speaking of a living person who is deaf but has his other faculties. The term would not be used of a dead man. Consequently, the Siphra rules that the full prohibition does not apply to anyone who curses a dead man. Many people think that it is worse to speak ill of the dead than of the living, as in the Latin tag: “de mortuis nil nisi bonum.” But the Siphra holds that it is far worse to speak evil of the living, who can be harmed, than of the dead who cannot be harmed by anything we say of them.

“Nor put a stumbling-block before the blind.” This means before someone who is blind to a certain thing. If for example, a man asks you whether the daughter of so-and-so may marry a priest, you must not tell him that she may when in reality she may not. If a man asks your advice do not give him harmful advice. Do not tell him to get up early in the morning in order that he might be captured by bandits or go out at noontime so that he might suffer sun-stroke. Do not advise him to sell his field and buy a donkey in order to seek an opportunity to get it for yourself. You might argue: I am giving him good advice. But the thing is known in the heart, as it is said: “but thou shalt fear thy God; I am the Lord.”

The Siphra argues that the verse can be extended to anyone who is blind to a mistake he is making. He should not be encouraged to persist in his mistake. You must not take advantage of his weakness for your own gain or to vent your malice on him. Certain people were forbidden to a priest—a divorced woman, for example. If a priest asks you whether he should propose to a girl, and he only wishes to do so if he knows that he may marry her, you must not cause pain to both of them by misleading him. The other examples explain themselves. The final comment is to the effect that while a man can fool his neighbors God knows of it and He cannot be fooled.

Safety first

The law of making the roof of one's house safe.

When thou buildest a new house, thou shalt make a parapet for thy roof, so that thou bring not blood-guilt upon thy house if anyone should fall from it.

DEUTERONOMY 22:8

“When thou buildest a new house.” I know only that the law applies when he builds a house. How do we know that it applies also when he buys a house or inherits one or when a house is given to him as a gift? Therefore Scripture says “so that thou bring not bloodguilt upon thy house” and this covers all cases. I know only a proper house. How do we know that the law applies also to a place in which straw is kept or to a stable or to a place in which wood is kept or to any other kind of storehouse? Therefore Scripture says “so that thou bring not bloodguilt upon thy house” and this covers all cases. In that case we might have supposed that the law applies also to a lodge at the gate or to a balcony or to a porch, therefore Scripture speaks of “a house.” A house means a place used for living in, but these are not in constant use.

The Siphre argues against a too literal interpretation of the word “build.” Since the reason given for making a parapet is to protect people from falling, it obviously makes no difference whether the

house is one newly built or whether bought, received as a gift or inherited. If it has no parapet it is the duty of the owner to make one. The laws here refer to houses with flat roofs since these were often used by people for workspace or pleasure. They were dangerous without proper protection from falling. The Rabbis in the Talmud extend the law developed here to include all manner of dangerous things. They said, for example, that a man must not keep an unstable ladder in his house or a vicious dog. In the Siphre, however, the law is said not to extend to mere casual rooms which are hardly ever used, like the porch at a gateway. One would not normally go up onto the roof of such a place. The reference to the balcony is to the roof of the balcony.

“Thou shalt make a parapet for thy roof.” I know only that the law applies to a roof. How do we know that it also applies to a pit or a well or a dug-out or a cellar? Therefore Scripture says “so that thou bring not bloodguilt upon thy house” and this covers all cases. If that is so why does it say a “roof?” This is to exclude the ramp to the altar in the Temple. Furthermore, the term “house” includes the Temple itself but the term “roof” excludes the entrance hall of the Temple.

The Siphre goes on to say that the term “roof” must not be taken too literally. If a man had an underground dwelling into which people could fall he is similarly obliged to build a protecting wall around it. But then why mention a “roof”? The Siphre replies that this is to indicate that the ramp leading to the altar in the Temple did not require a protective rail. This may be because the priests who used the ramp were careful where they walked and were used to it. The Temple is called a “house”—the house of God—and hence a parapet should be made around its roof. But the excluding term “roof” meaning the roof of a house suggests that a parapet is not required around the entrance hall of the Temple, probably because it was unusual for anyone but the priests and Levites to walk there and, again, they were used to it.

“New.” Rabbi says: Make the parapet while the house is new. How high should the parapet be? If the roof is only used for rolling the earth (to keep out the rain) it need be no higher than three hand-breadths, but if the roof is used for human beings to walk on

regularly it must be at least ten handbreadths high. "Thou shalt make a parapet." This is a positive commandment. "So that thou bring not bloodguilt upon thy house." This is a negative commandment.

"New:" This term is interpreted by Rabbi (Rabbi Judah the Prince, the editor of the Mishnah, who, because of his importance, is simply called "Rabbi" without his name being added) to mean that it is a religious duty to build the parapet as soon as one builds the house, not to wait until the house is old to some extent. If the roof is only resorted to for the purpose of keeping everything in order only a small protective wall is required, otherwise a better protective wall is called for.

"If anyone should fall from it." The man who falls deserves to do so but good things are brought about by good people and bad things by bad people.

This is an interesting comment. It is based on the fact that the Hebrew of the verse can mean "the fallen one should fall from it." The interpretation is given that God would not let man fall unless He had so ordained it. In that case why is the person who neglected to build the parapet to blame? The man would have fallen in any event. Yes, answers the Siphre, but the good person should never be the instrument of God in such a matter. The question raised here is a very important one. Some people argue that it does not matter so much if accidents are caused by one's negligence because if God does not want the accident to happen He will not allow it. This passage in the Siphre reminds us that this is an irreligious attitude. God has given human beings the skills and wisdom to care for life and this is their duty.

"From it." And not into it. If the public domain were ten handbreadths higher than the house and someone fell into the house the owner of the house is not guilty, as it is said: "from it" and not "into it."

Although even in this case it would obviously be a good thing for the man to build a parapet, he does not incur any guilt if he fails to do so.