



מסכת

מבות

תלמוד בבלי

עם כל המפרשים כאשר נדפס מקדם ועם הוספות
חדשות כמבואר בשער השני.

מושגי חז"ל הנמצאים
במסכת מכות
נערך ע"י כרמי ישראל גרוס

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	עייל			

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כיצד העדים פרק ראשון

דף ב.

1. עדות שאי אתה יכול להזימה

Witnesses that we cannot do to them what they tried to do. For example if they did not know the exact time of the alleged crime, no one can say to them you were with us in another place at that time.

Such witnesses are not valid since the Torah considers the possibility of giving to them what they tried to give as a prerequisite for valid witnesses.

This connects to our Gemarah b/c Tosafot ask why do we even accept witnesses of גרושה בן since they will not get what they tried to give.

2. לאחיו ולא לאחותו

To his brother and not to his sister.

If עדים זוממים tried to give a punishment to a man and a woman, such as בת כהן ובוועלה, they get the punishment they tried to give him and not hers.

This connects to our Gemarah b/c our Mishnah continues from מסכת סנהדרין where this statement was made, and in the Beit Midrash a Tanna added that there are other ע"ז who don't get at all what they tried to give, and our Mishnah asks how so?

3. לו ולא לזרעו

To him but not to his children.

When you punish the ע"ז, you may only punish them but not give them a punishment that would affect their children.

This connects to our Gemarah because it explains why we do not give the עדים זוממין בן of גרושה what they tried to give, since if we made them חללים it would affect their children.

4. בעינן כאשר זמם וליכא

We need to fulfill כאשר זמם, and we do not.

In order to properly fulfill the punishment of כאשר זמם the witnesses should get exactly what they tried to give, and in this case this does not happen.

This connects to our Gemarah in that it explains why we can't just punish the עדים זוממין by making them חללים and not their children.

5. מה המחלל אינו מתחלל, הבא לחלל ולא חילל אינו דין שלא יתחלל

If someone makes a חלל, (a Kohen marries a גרושה and has a child) he himself doesn't become a חלל, so if he only tried to make a חלל (ע"ז) but was not successful, most certainly he should not become a חלל.

This connects to our Gemarah as it is another attempt to explain why the עדים זוממין of גרושה do not become חללים.

דף ב:

6. מה הסוקל אינו נסקל הבא לסקל ולא סיקל אינו דין שלא יסקל

If someone stones they are not stoned, if one only tries to stone but does not stone, most certainly he should not be stoned.

(Rashi explains) If conspiring witnesses said someone was מחלל שבת and they managed to fool the court and they stoned the accused, and later you found out they were lying, the ע"ז would not be stoned, because the gemarah teaches us later that the punishment of כאשר זמם, does not apply if they succeeded. If so, it should certainly be the case that כאשר זמם would not apply if they did not succeed!

This applies to our gemarah in that we show through the above that when it comes to the punishment of כאשר זמם you cannot use the logic of 'attempt can't be worse than success', b/c if you were to use that logic you would wipe out the whole law of כאשר זמם, which is exactly a case of attempt being worse than success! Therefore, you cannot use that logic to prove that the ע"ז who only attempt to make someone a חלל should certainly not be made into חללים (see concept #5).

7. "כאשר זמם" ולא כאשר עשה

Like they tried to do and not like they did.

As we learn later in a Mishnah, ע"ז, are only punished with כאשר זמם if they were found out b/4 the accused was punished. However, if they managed to fool the court and they killed the accused, and later you found out they were lying, the ע"ז would not be killed.

Rashi uses this to explain concept #6.

8. "הוא ינוס אל אחת הערים" - הוא ולא זוממין

He must run to a city of refuge, he, but not the ע"ז

This is used to explain why the ע"ז who lied and said someone killed בשוגג do not themselves have to go to a city of refuge.

9. כל לאו שאין בו מעשה אין לוקין עליו

Any negative commandment that does not have an action, does not get lashes.

This is an opinion which holds that in order to get lashes for a לא תעשה, there must be an action involved. Speaking is not considered an action.

The gemarah uses this opinion to explain why we must use the whole דרשה of והצדיקו את הצדיק... והיה אם בן הכות הרשע to find the source of lashes for ע"ז and we did not simply use the pasuk of לא תענה ברעך עד שקר.

10. כופרא כפרה\ממונא

The Kofer payment is either an atonement or a monetary obligation.

When your שור מועד kills a man you must pay כופר. There is an argument whether that payment is an option for atonement that the Torah is offering since you were negligent in not watching your animal and it killed, or is a monetary obligation for the damage you did.

The Gemarah uses the opinion of כופרא כפרה to explain why ע"ז who lied about s/o being חייב כופר, would not themselves be obligated to pay. The reason would be that since it is only an option of atonement, we simply opt out.

11. "כופר נפשו" דמי מזיקאניזק

The payment of Kofer is paid by evaluating the value of the damager or the victim.

There is an argument whose worth is evaluated in order for the damager to pay Kofer. Do we say that you are paying for the damage you caused and thus should pay the value of the victim, or do we say you are trying to redeem your (the damager) soul from guilt and thus pay your value.

The gemarah brought this to try and say that this argument would be the same opinions as in concept #10 (כופרא ממונא=דמי ניזק - כופרא כפרה=דמי מזיק) but the gemarah rejects this and says that even if you say כופרא כפרה you still might say that you achieve your redemption by paying the worth of the victim.

12. "ונמכר בגנבתו" ולא בזממו

He is sold as an עבד עברי for stealing, not for being an זומם

If witnesses lied and said a person stole, if that person had no money he would be sold, if it turns out they are lying they however are not sold, b/c of the pasuk which reserves selling for s/o who stole. Therefore this would apply even if both the accused and the עדים זוממין had no money.

This comes to explain why עדים זוממין are an exception to the rule of כאשר זמם

13. עדים זוממין קנסא הוא

עדים זוממין are a fine (not a compensation)

That which עדים זוממין are given what they tried to give is to be considered within the classification of fines. This will have an impact on the law of paying by your own admission, which does not apply to fines (concept 14).

This comes to explain why, according to ר"ע, the עדים זוממין would not pay if they testified that s/o owed money and then admitted that they were lying.

14. קנס אינו משלם על פי עצמו

Fines are not paid by the admission of your own mouth.

If s/o confesses that he stole money, he would have to return the money since he confessed.

However, he would be exempt from paying כפל as paying the double payment is a fine, and you do not pay fines through the admission of your own mouth. This is learned from a pasuk.

This relates to our gemarah as it used to explain why according to ר"ע, the עדים זוממין would not pay if they testified that s/o owed money and then admitted that they were lying.

דף ג.

15. אין עד זומם משלם ממון עד שיזומו שניהם

ע"ז are required to pay if proven to be lying only if both are proven false.

The Gemarah uses this to prove that when Rav said an ע"ז pays his portion, he could not have meant in a case when only one was proven to be lying, b/c in such a case he would not pay at all.

16. כיון שהגיד שוב אינו חוזר ומגיד

Once they say their testimony they may not go back and say otherwise.

Witnesses are not believed to retract testimony once accepted in court. Rather their first statements stand.

The Gemarah uses this to prove that when Rav said an ע"י pays his portion, he could not have meant in a case when one witness admitted he was lying, b/c in such a case he would not be believed to retract his testimony.

17. מחוסר גוביינא

Missing collection.

When one is owed a loan, he still must go through the process of collecting it from the borrower.

Rashi uses this to explain why a man could sell his chances for the כתובה for more money than his wife, since she is מחוסר גוביינא. Any man buying the כתובה from her would still have to go through the difficult process of collecting the loan from the husband (if he divorces her) or from the inheritors (if he dies). Therefore he would pay less for the כתובה.

דף ג:

18. המלוה את חבירו לעשר שנים אין שביעית משמטתו

If one lends money to his friend for 10 years, the loan is not cancelled by the Sabbatical year. The Torah forbids a creditor to demand back his loan on the Sabbatical year (לא יגוש). We can infer from this prohibition that the type of loan the Torah is talking about, when teaching us that the Sabbatical year cancels loans, is the type of loan that *could be* demanded (and hence the Torah must tell you that even though it *could be* demanded you are forbidden to do so). Therefore, a ten year loan that could *not* be demanded on the Sabbatical year (since it is not yet due) is not included in the Torah section that teaches us that the Sabbatical year cancels loans. This applies to our gemarah because we try to prove this law from our Mishnah. Our Mishnah refers to a case when there was a 10 year loan that the ע"י tried to make him pay after 30 days. The Mishnah says the ע"י would have to pay for use of the money for 9 years and 11 months. If the Sabbatical year would have cancelled the loan, the ע"י should have to pay the entire amount of the loan, since they tried to make him pay back a loan that would have been cancelled! This seems to prove that the Sabbatical year does not cancel 10 year loans. The gemarah counters that there is no proof to this as our Mishnah is talking about one of the 2 cases mentioned below.

19. המלוה את חבירו על המשכון אין משמיטין

If one loans money to his friend and takes collateral, the Sabbatical year does not cancel the loan.

The reason for this is that since I have collateral I do not have to demand the loan, rather the debtor comes to me to pay in order to regain his deposit.

The gemarah uses this case to explain why in our Mishnah the Sabbatical year did not cancel the loan (see end of #18).

20. המוסר שטרותיו לבית דין אין משמיטין

If one gives his IOU to the court, the Sabbatical year does not cancel the loan.

According to Rashi this is the פרוזבול set up by Hillel that allows people to lend money and not have the loan cancelled on Shmitah. The creditor gives his loan to the court and reserves the right to demand the loan as a messenger of the court.

The gemarah uses this case to explain why in our Mishnah the Sabbatical year did not cancel the loan (see end of #18).

21. כל המתנה על מה שכתוב בתורה תנאו בטלוקיים

If one makes a condition (to a loan or sale) that goes against the Torah his condition is void/binding.

If a person loans money to his friend and makes a condition that the creditor will pay him even though the Sabbatical year passes, such a condition is void according to some opinions and binding according to other opinions. The same argument would apply if one sold an object to his friend and made a condition that the buyer would waive his rights not to be overcharged (אונאה).

Our gemarah explains that if the lender (or seller), however, tried to say that the laws of Shmittah (or אונאה) do not apply then they most certainly would apply since he does not have the power to void the Torah laws. All he can say (according to one opinion) is that even if the laws apply you the creditor (or buyer) will waive your rights.

22. המלוה את חבירו סתם אינו רשאי לתובעו פחות משלשים יום

One who lends money to his friend for an unspecified amount of time, may not demand payment in less than 30 days.

The Gemara states that this is true for both written loans and oral loans. This law is learned out from a pasuk which seems to state that the 30 day time limit is a type of 'mini Sabbatical' time.

23. שלשים יום בשנה חשוב שנה

Thirty days in a year are considered like a year.

For some halachik issues we consider 30 days like a year, meaning even if the Torah specified a year limit, after 30 days that limit is considered fulfilled.

The Gemarah uses this rule to explain concept #22. The Torah talks about a second type of Sabbatical year (קרבה^(א) שנת השבע^(ב), שנת השמיטה) and we understand that the second type of year refers to the 30 days in which you may not claim an unspecified loan (sort of like the Sabbatical year in which you cannot claim loans). Even though the Torah called it a year (שנת) we use the rule of שלשים יום בשנה חשוב שנה to say it only refers to 30 days.

24. הפותח בית הצאווור בשבת חייב חטאת

One who opens a collar on Shabbat is obligated to bring a sin offering.

If one were to take a piece of cloth and cut an opening for the neck, thus creating a usable piece of clothing (sort of like a poncho) he would be obligated to bring a sin offering (if he did the act בשוגג). The reason for this is that by completing the garment he is transgressing the אב מלאכה of מכה בפטיש, literally the 'final blow of the hammer', which applies for any act which act as the finishing touches to complete an object, כלי.

The Gemarah asks why is this different than cutting a lid off a barrel, which is allowed. The Gemarah answers that the cloth was one piece of cloth, not a כלי, while the barrel was not one piece, rather a barrel, a כלי, with a lid.

25. שלשת לוגין מים שאובים

3 Lohg of drawn water.

If a mikvah does not contain the required 40 Saah of rain water it is considered a מקוה חסר and may not be used until the 40 Saah are added. If one poured 3 lohg of drawn water into a מקוה חסר, the mikvah becomes פסול, invalid, and may no longer be used at all.

The Gemarah discusses the following two cases that relate to this concept:

26. שלשת לוגין מים שנפל לתוכן קורטב יין ומראהו כמראה יין ונפלו למקוה לא פסלוהו

Three lohg of drawn water to which was added wine, and now all looks like wine, which fell into a mikvah (חסר), does not invalidate the mikvah.

The reason for this is that only drawn *water* invalidates and this mixture *looks* like wine is no longer called water, but, rather, diluted wine. The Gemarah compares this case to the following case:

27. מי צבע פוסלים את המקוה בשלשת לוגין

Colored water invalidates a mikvah if it contains 3 lohg (again, only if it fell into a חסר). The gemarah explains that this differs from the above case in that this is called colored water, hence it retains its status of drawn water.

דף ד.

28. אלו פוסלים את התרומה...הבא ראשו ורובו במים שאובין

The following invalidate a person from eating Terumah...one who enters (3 lohg of) drawn water.

There is a Rabbinic decree that states if a person came into contact over most of his body, with 3 lohg of drawn water, that person may not eat Terumah.

Our Gemarah uses this concept to explain the case of a barrel of water that fell into the sea and a person immersed himself in that spot, the person remains impure for Terumah. The Gemarah explains that since sea water remains somewhat stagnant we are afraid that the water from the barrel (which is 3 lohg of drawn water) remained in one spot and that is exactly where he immersed himself.

29. אוקי גברא אחזקיה

Place a person on his status quo.

A general rule applied to many cases is that when in doubt if a Halachik status has changed or not, we keep the person on his previous status (since we do not know if it changed).

The Gemarah applies this rule to explain case #28. Since the person was impure when he immersed himself in the sea, and you are not sure if he immersed in sea water or in the barrel water, he retains his previous status of being impure (at least regarding the Rabbinic decree in #28).

30. "כדי רשעתו" משום רשעה אחת אתה מחייבו ואי אתה מחייבו משום שתי רשעיות

“According to his transgression”, for one transgression you may find him guilty, but you may not find him guilty for two transgressions.

If a person does an act which has two punishments, for example he shoots someone, killing him (death penalty) and tearing his shirt (monetary payment), he (usually) only gets the more serious penalty, not both.

This gemarah uses this to explain the next concept.

31. כל המשלם אינו לוקה

All who pay do not get whipped.

If **לא תענה** tried to make someone pay, they deserve 2 punishments. Lashes for **לא תענה** and paying money for **כאשר זמם**. However, he will only get one (see #35). While usually he would get the more serious penalty, in this case he does not since **כאשר זמם** will override the **לא תענה**, b/c if the Torah meant for you to get the lashes why did it bother to write **כאשר זמם**.

דף ד:

32. לאו הניתק לעשה אין לוקין עליו

A negative commandment that is followed by a positive, corrective, commandment. Such a **לאו** does not get lashes.

The reason for the above is that the Torah is telling us that if one transgresses the **לאו** the correction for the sin is not lashes but to do the corrective positive act. An example would be stealing which is a **לאו** followed by the command to return the stolen object.

According to one opinion this explains why if one left over from the **קרבן פסח** they would not get lashes, since the Torah provided a corrective act of burning the left over sacrifice.

33. מה מצינו - בנין אב

What do we find.

If we find a certain law in the Torah in one case we apply it to other cases unless we have a reason to assume it would only apply in that one case.

For example, we find the law that **לאו שאין בו מעשה לוקין עליו** by **מוציא שם רע**. Using a **מה מצינו** we try to apply it to all **לאוים** in the Torah.

34. לא ראי זה כראי זה - בנין אב משני כתובים

The special aspect of this is not like the special aspect of the other.

When attempting to learn from a **מה מצינו** (see #38) we can disrupt the wider application of the new law by finding a special characteristic of the original case which we could claim is necessary for the new law to apply. For example, we could claim that in the above case, the law of **לאו שאין בו מעשה לוקין עליו** would only be by **מוציא שם רע** b/c **מוציא שם רע** is special in that it is **לוקה ומשלם**. The only way to disprove this is to find another case in which we have the new law, which does not have this special characteristic. For example, since we find the law of **לאו שאין בו מעשה לוקין עליו** also by **עדים זוממין**, which is not **לוקה ומשלם**, it proves that this special characteristic of **לוקה ומשלם** is not necessary to have the new law of **לאו שאין בו מעשה לוקין עליו**. Now, even though the second case of **עדים זוממין** might have its own special characteristic (such as **התראה**) since this characteristic does not exist in the first case (**מוציא שם רע**) we

have again proven neither of these special characteristics are necessary to have the new law of לאו שאין בו מעשה לוקין עליו and we may thus apply it to the whole Torah.

דף ה.

35. משלשלין בממון ואין משלשלין במכות

We can divide monetary payment but we cannot divide lashes.

If witnesses are proven liars they can split up monetary payment (each pays half) but they cannot split up lashes (each must get the full amount).

In the gemarah 2 reasons are given. One is that in the Torah lashes are compared to death. Just like you cannot give half a death penalty so too you cannot give half lashes. The other reason is that money can be combined while lashes cannot.

36. אין העדים נעשין זוממין עד שיזימו את עצמן

Witnesses cannot become זוממין עדים until you prove the witnesses false.

If a second set of witnesses claim that the testimony of the first set is false (the accused was not there) that does not make the first set זוממין, (rather they are considered עידי החכשה and the two sets cancel each other's testimony, for why believe the second set more than the first). In order to make the first set זוממין the second set must testify that the first set were not there, thus proving the witnesses false not necessarily the testimony. (The reason that in this case we believe the second set against the first is either a גזירת הכתוב or a סברה)

37. עידי החכשה

Conflicting witnesses.

See concept #41

38. גברא בר קטלא

The man is considered dead

A man whom the court has convicted of a capital crime is considered to be already dead.

This connects to our gemarah in that if זוממין עדים had testified falsely against a man who had already been convicted (בעידנא דקא מסהדי גברא בר קטלא) - for example: on March 1st they testify that on January 1st A had been convicted of killing B, two other witnesses come and say that that set was not there on January 1 but rather with them in another place, but on January 2nd A was convicted of killing B. In effect when the זוממין עדים testify (March 1st), the accused had been already convicted), the זוממין עדים are not punished, since they lied about a 'dead man'. The gemarah also tells us that the same would apply if they testified falsely that a person owed a קנס, and he had already been convicted of owing the קנס.

דף ה:

39. אם הוחזקו זו כל ישראל מי הוחזקו

If she has earned a reputation of guilt, do we say all of Israel are assumed guilty?

Every person has a חזקת כשרות an assumption of being innocent of all guilt (compare with concept #29).

This connects to our gemarah in the case where a women had previously brought 2 sets of witnesses and each were proven liars. She then brings a third set who seem to be telling the truth. ריש לקיש said that we should not accept the third set b/c we can assume that they also are lying. ר' יוחנן disagrees b/c he uses the above concept and argues that even though the women lost her assumption of innocence the 3rd set has not, and they retain their חזקת כשרות.

40. אין עונשין ומזהירין מן הדין

We do not punish or warn through logic (a קל וחומר)

Even though the Torah warns against, and punishes one, for marrying a half sister, it still warned and wrote a punishment for a full sister, b/c we would could not learn the warning or punishment for a full sister from the warning and punishment of a half sister, even though it is logical to assume so.

This also explains why if the עדים זוממין are punished for just trying to kill someone, they are not punished for actually succeeding to kill someone (see concept # 7), even though it is logical to assume so.

41. אין העדים זוממין נהרגין עד שיגמר הדין

עדים זוממין are not killed unless the accused is convicted.

The gemarah explains that this is meant to exclude cases where the accused has not been convicted yet or if

the accused is actually put to death, for in such a case the עדים זוממין are not killed, in case a. b/c it says נפש בנפש and in case b. b/c it says לעשות לאחיו which seems to require that the accused is still alive (see concept #45). This is one of the cases where the Rabbis disagreed with the צדוקים who claimed the עדים זוממין are only punished if the accused was put to death.

42. אין העדים זוממין נהרגין עד שיזומו שניהם

עדים זוממין are not killed unless both witnesses are proven liars.

The reason for this is that the Pasuk tells us עד שקר העד and we know that whenever it says in the Torah עד it means 2 witnesses.

This connects to the case where R. Yehudah ben Tabai killed an עד זומם, in order to prove the צדוקים wrong on the argument above (#46).

43. אף שלשה נמצא אחד מהן קרוב או פסול עדותן בטלה

Even three (witnesses), if one is found to be a relative or an invalid witness, the whole testimony is invalid.

From a Pasuk we learn that in regards to witnesses three are compared to two. R' Akiva learns from this the above concept. Therefore, even if only one of three witnesses is proven invalid, even though two good witnesses remain, the whole testimony is thrown out of court. There is a מחלוקת if this applies only to דיני נפשות or also to דיני ממונות.

44. מדה טובה מרובה ממדת פורענות אחד מחמש מאות

The measure of good (reward) is greater than the measure of suffering (punishment) 500 times. When Hashem rewards it says He does so for at least 2000 generations, while punishment is for only 4 generations.

This connects to the Mishnah where we find that if a third witness joined a group of 2 and then all 3 were proven liars, they are all punished. Even though the third witness could claim that, in reality, his testimony was (since you had 2 witnesses without him), he is still punished. We learn from here that joining sinners, and doing like them, even though they could have done it without you, is still punishable. The above concept teaches us that this would surely be the case if one were to join those doing a mitzvah, even though he is not needed, he would be rewarded.

דף ו.

45. "והצילו העדה" ומהדרינן אזכותא

"And the congregation shall save", we search for merit.

The Pasuk teaches us that in capital offences the court should actively search for ways to save the accused.

According to R' Yosi (according to Rashi) this is why we would apply the rule אף שלשה נמצא (concept #48) only to capital cases. He would say that since the Pasuk that compares 3 to 2 witnesses was found by capital cases, it would not be logical to apply it to all cases, since only by capital cases are we looking to save the accused by invalidating all the witnesses if even one is found invalid.

46. תוך כדי דיבור - כדי שאילת תלמיד לרב

Within the time of speech - The time it takes for the student to greet to teacher.

For many Halachik applications, we consider speaking within this time frame to be considered as if one spoke without interruption.

The gemarah considers a third witness to be considered in the same group as the other two (so that in concept #47 all three would have to be proven liars for the witnesses to be punished) only if the third witness actually testified immediately after the other two, or at least תוך כדי דיבור.

Tosafot explain that this applies only to joining the witnesses who are lying. However, joining true witnesses into one group (for concept #48) would not depend on testifying together, but rather on *intending* to testify (for example warning the accused together) at the time they saw the act.

דף ו:

47. עדות מיוחדת

Individual witnesses.

If one witness sees from one window and the other sees from another window, if they do not see each other, nor do they see the person warning, they cannot be combined. This only applies for דיני ממונות but not for דיני נפשות.

The Mishnah taught us that the same would apply for 2 seeing from one window and two seeing from another. If they see each other, or even if one from one group sees one from the other group, then they are considered one combined set of witnesses.

48. "על פי שנים עדים" שלא תהא סנהדרין שומעת מפי התורגמן
"By the mouth (word) of two witnesses", the Sanhedrin may not hear (the testimony) through a translator.

The gemarah explains that there is no problem if the judge understands the language of the witnesses, and only needs a translator to speak to them.

R' Yosi used the above pasuk to learn that the witnesses must also be the warners, so that all the testimony was through them.

דף ז.

49. אי לית ליה ללוה לאו בתר ערבא אזיל מלוה?

If the borrower does not pay, won't the lender come after the guarantor?

In a case where the witnesses were not related to the lender or borrower, but were related to the guarantor, we might have thought that they could testify. The Gemarah uses this idea to explain why they cannot, for in the end result the guarantor might have to pay, and the witnesses are thus related to someone directly involved in the case (the guarantor).

50. מפני זכותה של ארץ ישראל

Because of the merit of Eretz Yisrael

If a man was convicted in a court outside of Israel and ran away to Israel, the court in Israel must retry him. The reason for this is that we hope that as a result of the merit of being in Israel the court will find a reason to find him innocent.

אלו הן הגולין פרק שני

דף ז:

51. כל שבדרך ירידתו גולה

All that killed in a downward motion go to galut

One who kills unintentionally is sent to the city of refuge only if he kills while in a downward motion, such as going down a ladder or lowering a barrel. The gemarah learns this concept from the pasuk which says ויפל עליו. However, if the killer was using an upward motion, such as going up the ladder or pulling up the barrel, he would not go to galut.

It is possible to explain that one who is going down should be focusing on what is below him and therefore held more responsible than one going up.

52. אומר מותר

One who says it is permitted.

If a person committed a sin thinking it was permitted some say he is considered קרוב למזיד and some say he is קרוב לשוגג.

Our gemarah uses this idea to explain why we needed the pasuk of בשגגה to exclude a case of מזיד from galut (when it should be obvious that מזיד does not go to galut). The gemarah answers

that we are excluding the case of **אומר מותר**, which is considered **קרוב למזיד** and does not go to galut.

53. ירידה שהיא צורך עליה

Going down for the purpose of going up.

(See concept 56) If a person kills while basically going up but is doing a downward motion in order to go up. The gemarah considers this as is he is going down and does go to galut.

The gemarah uses this to explain the case of one going up a ladder, who is pressing down on the rung as he goes up. The rung breaks and falls and kills someone. The gemarah decides that if the rung actually somewhat bent down as he stepped on it (it was weak wood or not well attached) he would go to galut for the above reason.

54. יש אם למקרא - יש אם למסורת

Primacy is assigned to the way we read the word - Primacy is assigned to the written way we received the word.

When a word is written in the Torah on way and read another way, which way is to be considered more primary when understanding the pasuk.

This argument explains the argument in our Mishnah, whether we understand the pasuk of **ונשל הברזל** as meaning the metal ax head slipped off the handle and killed, and only in that case does he go to galut, or if the ax head caused a wood chip to fly and kill, and only in that case does he go to galut. If we follow the written word (which would spell out (vnishel) it would mean it caused the wood chip to fly off. If we follow the reading of the word (vnashal) it would mean the ax head flew off and killed.

דף ח.

55. "ומצא" פרט לממציא את עצמו

"And it found", excluding one who presents himself.

The case of galut mentioned in the Torah talks of one chopping wood, where the ax head or the wood chip (see above) 'found' the victim. This would exclude from galut a case where the victim was not in the path of the projectile when it was launched, but put himself in its path afterwards. Our gemarah uses this to explain the opinion in our Mishnah which absolves (from galut) one who threw a rock when no one was in its path, and when it left his hand someone stuck out their head and was hit and killed.

56. "ומצא" פרט למצוי, שלא ימכור ברחוק ויגאל בקרוב

"And he will find" excluding one who sells are distant field in order to redeem a closer one.

One who sells a **שדה אחוזה**, a field of inheritance, may redeem it at any time, (the buyer must sell it back to him). However, this is only if he found new money, not available to him at the time he sold the field. Therefore, he may not sell a distant field, which was in his possession when he sold the closer field, in order to redeem the closer field.

The gemarah brings a contradiction between the use of the word **מצא** in this case and its use in the concept above. Here it seems to mean finding something that was not there before, while in the above concept it seems to mean something that was there all along. The gemarah answers that the meaning of the word changes depending on context.

57. מה יער רשות אף כל רשות - כיון שאם מצא חטוב אינו חוטב, לאו מצוה

Just like the forest is a non-mitzvah, so too all are non-mitzvah.- Since if he found it chopped he would not have to chop, it is not a mitzvah.

The case of galut mentioned in the Torah talks of one entering a forest to chop wood. The fact that it used such a case is to teach us that all cases of galut refer to optional acts, such as entering a forest to chop wood. Therefore if one kills בשוגג while fulfilling a mitzvah, such as messenger of the court who whips the accused, he does not go to galut.

The gemarah considers all acts of chopping wood as a רשות, because even chopping wood for a סוכה, is not really a mitzvah, since if he found wood he would have no obligation to cut it himself.

דף ח:

58. "בחריש ובקציר תשבות" - אפילו חריש של ערב שביעית שנכנס לשביעית וקציר של שביעית שיצא למוצאי שביעית

"From plowing and harvesting shall you rest" - Even the plowing of the 6th year for the 7th, and harvesting of the 8th year from the 7th.

Sine the pasuk is not needed to tell me you may not plow or harvest on the Smittah year, as I know that from other pesukim, it rather comes to teach me that I may not even plow on the 6th year if the purpose of that plowing is for the 7th, and all that grows on the 7th year has *kedushat shviit*, even if harvested on the 8th year.

59. "בחריש ובקציר תשבות" - מה חריש רשות אף קציר רשות, יצא קציר העומר שהוא מצוה

"From plowing and harvesting shall you rest" - Just like plowing is a non-mitzvah, so too harvesting. This excludes the harvesting of the Omer, which is a mitzvah.

This is the opinion of R' Yishmael, who disagrees with the explanation given in #63, and rather says the pasuk applies not for the Shmittah year, but for Shabbat. It teaches me that the prohibition of harvesting on Shabbat is compared to the prohibition of plowing. Just like plowing is a non-mitzvah (as there is never a specific commandment to plow - see end of #62) so too, the only harvesting that is forbidden is a non-Mitzvah. Therefore, the harvesting of the Omer, can be done on Shabbat.

60. שגגת סייף ניתנה לכפרה שגגת חנק לא ניתנה לכפרה

An unintentional act, which, if done intentionally would receive סייף (i.e. murder), gets forgiven (through galut), but if that act would receive חנק, it doesn't receive the forgiveness of galut.

If one would murder his father intentionally, he would deserve סייף for murder and חנק for wounding his father. According to the one who says חנק is worse than סייף, he would be punished by חנק. Therefore, using the above concept, if he killed his father unintentionally he would not get galut, because galut is reserved for an unintentional act that if done intentionally would result in סייף.

The gemarah uses this concept to explain the opinion which argues with our Mishnah and says that a son who kills his father בשוגג does not go to galut.

61. "נשיא בעמך לא תאור" - בעושה מעשה עמך

“ A prince in your nation you shall not curse” - When he acts as one of your nation
The Torah prohibition to curse another Jew is only if the other Jew is acting in accordance with the Torah.

The gemarah understands from this that if one were to curse a כותי he would not be punished since the כותיים worshiped idols.

דף ט.

62. הכהו הכאה שאין בו שוה פרוטה לוקה

If you strike someone and the damage is not worth a perutah, you get lashes.

Striking someone is a לאו and therefore punishable by lashes. However, usually the lashes are not given, as the monetary punishment for the damages overrides the lashes (as we learned in concept 36.) However, if there are no monetary damages, such as in our case, the punishment of lashes would apply.

The gemarah uses this to explain how a Jew could get מלקות by something he did to a כותי.

63. "והיו לכם הערים" - לכם ולא לגרים

“These cities (of refuge) will be for you” - for you and not for residents

The exclusion of this pasuk refers to a גר תושב, who does not qualify for the protection of galut if he kills a Jew. However, if he kills another גר תושב he does go to galut. This is learned from a second pasuk which says that the cities of refuge will be for Jews and also for ולגר ולתושב בתוכם.

דף ט:

64. מכאן שבן נח נהרג שהיה לו ללמוד ולא למד

From here we learn that a non-Jew is killed, because if should have learned and didn't.

Ignorance of the law or of obvious circumstances is not an excuse. Since a non-Jew does not need התראה he can be killed for killing others or immorality, even if he thought it was permitted.

The gemarah learns this from the fact that if אבימלך would have taken שרה he would have deserved the death penalty, even though he thought she was a single women and merely אברהם's sister. This is because he should have realized that אברהם might be lying to save his life. After all, אברהם realized the type of depraved, evil, society they were by the fact that when he came to the city they did not ask him if he needed food or water, but rather, is she your wife. Therefore, אבימלך plea of innocence is rejected by Hashem.

65. אין מיעוט אחר מיעוט אלא לרבות

One exclusionary term followed by another exclusionary term, becomes inclusionary.

When the Torah uses 2 exclusionary terms, it is coming to tell us not to exclude more cases, but, rather, that only these are to be excluded, but others are to be included.

Our gemarah has such a case where the term אשר יבוא את רעהו ביער seems to include everyone, even a blind man. Therefore, the following exclusionary term, בלא ראות, without seeing, would exclude a blind man (b/c it excludes s/o who could not see in any case). When

the Torah follows with a second exclusionary term, בבלי דעת, it comes to tell us that a blind person is actually included in the laws of galut.

66. שלא ניתנה התראה אלא להבחין בין שוגג למזיד

Because the need to warn was only given to differentiate between שוגג and מזיד.

This is the opinion of ר' יוסי ברב יהודה, who holds that the only reason a person must be warned in order to get the death penalty, is because they might claim "I didn't know it was forbidden." Therefore, in cases where we know they knew it was forbidden, such as a תלמיד חכם, there is no need for warning.

Our gemarah uses this to explain the opinion of ר' יוסי in our Mishnah who held that a known enemy of the victim does not go to galut, but is killed, even though he was not warned. Since we are sure that he did this on purpose, he does not require warning.

דף י.

67. הללו קולטות בין לדעת בין שלא לדעת

These protect whether the killer intended such, or whether he did not intend as such.

The 6 cities of refuge mentioned in the Torah, protect the killer whether the killer knew that the city protected him or even if he did not know. However the additional 42 Levite cities, which also were cities of refuge, only served as refuge if the killer knew that the city offered refuge.

68. "וחיי" - עביד ליה מידי דתהוי ליה חיותא

"And he shall live" - provide for him the means to live.

The Torah requires the Rabbis to make sure the cities of refuge have all the necessities for the killer to live a normal life. This may include bringing water, job opportunities, Torah education, etc. In addition, we make sure that it will not be easy for the גואל הדם to find him or kill him in the city.

69. לדברי תורה שהם קולטות

Words of Torah provide refuge.

If one learns Torah it protects him from harm. The Gemarah says that this only applies when he is actually learning Torah. According to one opinion it only protects him from the מלאך המות but not from being killed by humans.

The Gemarah asks why does a Rav who killed have to go to an עיר מקלט if the words of Torah offer him refuge. The Gemarah answers the above answers.

70. "אוהב כסף לא ישבע כסף" - מצוה שבאה לידי אקיימנה

"One who loves money will never be satisfied with money" - A mitzvah that comes to my hands, I will fulfill.

The Gemarah tells us that this also refers to one who loves mitzvot will never be satisfied, but will always look for opportunities to do mitzvot.

The example used in the Gemarah is Moshe. Even though he knew that the three cities of refuge he would set up in Trans-Jordan would not be effective until the three other cities were set up in ארץ כנען, he did not hesitate to set them up anyway.

71. הרבה תורה למדתי מרבותי ומחבירי יותר מהם ומתלמידי יותר מכולם

Much Torah have I learned from my teachers, from my friends even more than them, and from my students I have learned more than from any of them.

The Gemarah uses this to explain a pasuk which they translate to mean only if one teaches many students he will gain knowledge.

72. מי גרם לרגלינו שיעמדו במלחמה שעריך ירושלים שהיו עוסקים בתורה

Who helped our feet to be able to stand in war, it was the gates of Yerushalayim, who learned Torah.

The Gemarah uses this to explain the pasuk עומדות היו רגלינו בשעריך ירושלים

דף י :

73. בדרך שאדם רוצה לילך בה מוליכין אותו

In the path that a person wishes to go, they (Hashem) guides him.

The Gemarah brings proof to this from Tanach, (one example is בלעם) that Hashem does not stop a sinner from following a path that he has chosen.

74. עיר שאין בה זקנים...אינה קולטת

A city that has no elders...does not offer refuge

The Gemarah learns this from the pasuk which states that the רוצח must speak to “the Elders of the city”. (Another opinion holds that this is preferable, but not necessary). The same requirement applies for sentencing a בן סורר ומורה and for bringing an עגלה ערופה.

A possible explanation is that the city must be a place where the רוצח can be taught Torah and the importance of life, hence the setting aside of ערי לויים. If the city has no elders this will not take place.

דף יא.

75. כל דיבור לשון קשה

The Torah always uses the word דבר to refer to a harsh command.

The Gemarah asks why such a harsh term was used when Hashem instructed יהושע to set up the ערי מקלט. The Gemarah answers either because יהושע delayed or simply because it was a Torah commandment.

76. שהיה להן לבקש רחמים על דורן ולא בקשו

They should have prayed for their generation and they did not.

As leaders of their generation the כהן גדול is held somewhat responsible for those who kill בשוגג. The Torah demands that they pray for the people of their generation so that such deaths should not occur.

The Gemarah uses this concept to explain why the mothers of the כהן גדול would supply food and clothing to the רוצח so that they should not pray for the death of the כהן גדול (or pray for him to live). The כהן גדול had to worry about the effect of their prayer (or needed their prayer)

because otherwise he would be held somewhat responsible. The Gemarah (on :יא) goes so far as to say that even the כהן גדול who was only active at the time of sentencing (but not at the time of the murder) is held somewhat responsible, since he should have prayed that the killer should be found innocent.

77. קללת חכם אפילו בחנם היא באה
קללת חכם אפילו על תנאי היא באה

The curse of a חכם even if for naught, it comes true.

The curse of a חכם even if conditional, it comes true.

The curse of a חכם is considered so powerful that it will come true (even though not necessarily only because of the curse) even if the person who was cursed complied, and even if it was made on condition and the condition was fulfilled.

The Gemarah leans this from the story of Achitofel, who was cursed by דוד (and eventually hanged himself) and from the story of שמואל who was cursed by עלי (and whose children did not follow in his path).

דף יא:

78. נידוי על תנאי צריך הפרה

An excommunication on condition needs to be absolved.

When a person is excommunicated on condition, even if the condition was fulfilled, he still needs the court to absolve him of the excommunication.

See concept 82. The Gemarah learns this from יהודה who was whose excommunicated by יעקב (if he did not return with בנימין) and even though he did bring him back, his bones did not find rest until משה prayed for him.

79. "אשר ינוס שמה" שם תהא דירתו ... שם תהא קבורתו

"That he will flee there", there will he live, there he will be buried

The רוצח must stay in the מקלט, עיר מקלט, and cannot leave even if needed for a mitzvah. If he dies before the כהן גדול he is buried there.

דף יב.

80. "ברך ה' חילו" אפילו חללין שבו

"Hashem has blessed his ", even the *challalim*.

We learn from this pasuk that if a חלל does עבודה it is accepted by Hashem.

This concept is used to explain the case of a Cohen who does עבודה and then finds out he is a חלל, according to ר' יהושע his service is accepted.

The Gemarah explains that it is possible that he holds that in truth we say that he was never truly a valid Cohen (meaning that retroactively his status as a Cohen is invalidated, and therefore, for example, he would not set a רוצח in a מקלט free) but still his service would be accepted because of the this concept.

Two mistakes were made by Yoav at that time.

When Shlomo Hamelech sent to kill Yoav, he ran to the מזבח and held onto the corner so that he would not be killed. However, he made two mistakes: 1. Only the top of the מזבח offers protection, and 2. Only the מזבח in the בית המקדש offers protection. אביי adds that another error he made is that it only protects a Cohen who is doing עבודה.

82. "ורצח גואל הדם את הרוצח" רשות ביד גואל הדם

"And the גואל הדם will kill the רוצח", the גואל הדם is permitted.

This is the opinion of ר' עקיבא that since it does not say that the גואל הדם should kill (ירצח), we learn that he is only permitted to do so but it is not a mitzvah. ר"י הגלילי holds that it is a mitzvah.

83. דברה תורה כלשון בני אדם

The Torah speaks like people do.

Whenever the Torah uses double words we would create a דרשה from the extra word.

However, this concept argues with that logic and says that the Torah's double word is simply for emphasis, like people speak, and not for any new דרשה.

The Gemarah uses this concept to explain the double word יצא יצא, which seems to teach us that if for any reason the רוצח left the עיר מקלט he loses his protection. The extra word would tell us even if he left unintentionally. However, another opinion holds that it would not be logical for his unintentional leaving to earn him death (for even his act of murder, since done unintentionally, only earned him גלות, and not death!) and says that the extra word is just the Torah talking like people.

84. לכל אין הבן נעשה שליח לאביו להכותו

In all instances a son may not be made a messenger (of the court) to strike his father.

Even in cases where a father is to be punished, a son cannot be the one who is appointed to do so. The only exception is a מסית who leads Jews astray, since the Torah commands us to have no pity on him.

The Gemarah understands therefore, that a son cannot be a גואל הדם to kill his father.

However, if a father kills his son בשוגג, the son of the son may become גואל הדם a to kill his grandfather.

דף יב:

85. באילן הולך אחר נופו

In cases of a tree, you go after the shade.

This is the opinion of ר' יהודה, where if a tree's trunk is inside the walls of ירושלים and the shade (leaves) of the tree is outside (or visa versa), then as regards eating (inside) or redeeming (outside) מעשר שני we consider the person to be by the shade even if he is standing by the trunk.

However, the Gemarah explains, we can only assume this to apply לחומרא, in order to more stringent. For example, if the trunk was inside and the shade outside and he was by the trunk he could not eat מעשר שני as if he was standing outside, and yet he still could not redeem the

שני מעשר since he is standing inside. Similarly, if the trunk was outside and the shade inside and he was standing by the trunk outside he could not redeem the שני מעשר as if he were standing inside, and yet he could not eat the שני מעשר since he is standing outside. The same would apply by an עיר מקלט if the רוצח who would be protected if he is standing by the trunk outside an עיר מקלט and the shade is inside the city (as we consider it as if he is in the city) and yet if he was by the trunk inside the city and the shade was outside, he could not be killed, since he is standing inside the city.

An alternative understanding of ר' יהודה is that he holds אף אחר הנוף, that you go *even* after the shade. That is to say that you would certainly go after the trunk (if he was standing by the shade outside an עיר מקלט and the trunk was inside, he would be protected) but you go *even* after the shade, as explained above (and, as above, all the cases are only לחומרא).

דף יג.

86. "והיו לכם הערים" לכם לכל צרכיכם

"And the cities shall be for you" for you, for all your needs

The Gemarah learns from this that the רוצח who lived in the עיר מקלט did not have to pay municipal taxes (possibly even rent) to the Leviim.

This applies to the six cities specified as the ערי מקלט, whether it also applies to the other 42 Levite cities is a מחלוקת.

87. "ושב אל משפחתו" למשפחתו הוא שב ואינו חוזר למה שהחזיקו אבותיו

"And he shall return to his family", to his family he returns but not to the status of his family.

This is the opinion of ר' יהודה regarding an עבד עברי, that when he returns home he loses any previous status he held in the community. The same applies by a רוצח who returns from the עיר מקלט.

דף יג:

88. חייבי כריתות ישנו בכלל מלקות ארבעים

One who deserves כרת is included in the laws of lashes.

If one committed an offense for which he deserved כרת, he would receive מלקות in addition to the כרת.

This is because every לא תעשה is liable for מלקות unless it is overridden by another punishment. This opinion (ר' עקיבא) holds that כרת does not override מלקות.

The Gemarah explains that this does not contradict the concept of כדי רשעתו, because if he did תשובה for the sin, then he would be forgiven the כרת punishment. Therefore it is not necessarily a case of 2 punishments. Or, because the problem of 2 punishments only applies to 2 punishments given by the courts.

89. כל מקום שנאמר השמר פן ואל אינו אלא לא תעשה

Every place where it says the words השמר פן ואל it is treated as a negative commandment.

Even when the Torah does not say לא, but rather uses any of the above words, it is to be treated as a לא תעשה, and it would be punishable by מלקות.

The Gemarah uses this to explain that the pasuk which says **לא תשמור לעשות**, is not a commandment not to ignore מצות עשה, but rather not to transgress negative commandments, as the word **תשמור** refers to **לא תעשה**.

90. דומיא דלאו דחסימה

Similar to the prohibition of muzzling.

In the Torah the pasuk teaching the prohibition of muzzling an ox while it threshes is immediately preceded by the laws of **מלקות**. We learn from this that negative commandments will only receive lashes if they are similar to the prohibition of muzzling.

The Gemarah learns from this that **לאו שאין בו מעשה** or **לאו הניתק לעשה** will not get **מלקות** since they are not similar to the **לאו דחסימה**.

91. זו היא שיבה זו היא ביאה

The 'returning' and the 'coming' are the same.

The laws of the Kohen returning to the house that has leprosy (after one week) are applied to the Kohen who comes to the house again through a **גזירה שוה**. This is frequently used as an example of a **גזירה שוה** that is made between two words that are not similar.

The Gemarah uses this concept to ask why we do not draw a **גזירה שוה** between **מלקות** and **מיתה** even though the words connecting them are not exactly similar.

92. אין עונשין אלא אם כן מזהירין

We do not punish unless we first warn.

This concept applies to the laws of the Torah. It tells us that before the Torah will give a punishment it will always first say "Do not do..." and then say "If you do you will get..."

This concept will effect the next 2 concepts.

93. לאו שניתן לאזהרת מיתת בית דין אין לוקין עליו

A **לאו תעשה** which is a warning for a capital punishment (such as **לא תרצח**) does not get **מלקות**.

A simple **לאו** in the Torah will automatically receive lashes. However, if the **לאו** was said as a warning for a capital offense (in which we never punish unless we first warn - see above concept) then we say that it is not a **לאו** written for **מלקות**, but rather a **לאו** written for warning. Therefore, if someone was to commit a capital offense, but be warned he would receive **מלקות** (and not death), he would not receive the lashes even though he would also not die.

The Gemarah uses this to explain that when ר' עקיבא said that **מלקות בכלל אינם** he did not mean that you cannot receive both **מלקות** and death (which is obvious because of **כדי רשעתו**) but that he cannot receive **מלקות** even if he does not receive death.

94. חייבי כריתות לא צריכי התראה

Sins which are punishable with **כרת** do not need warning.

Even though in general we say **אין עונשין אלא אם כן מזהירין**, this does not apply to **כרת**. This is proved from the fact that **פסח** and **מילה** get **כרת** even though they do not have an **אזהרה** (they are **מצות עשה**).

The Gemarah says this to explain why according to ר"ע (in the concept above) it is possible to get **כרת** and still use the **לאו** for **מלקות** (because **כרת** does not need the **לאו** for an **אזהרה**).

To separate

If one would commit a single offense that is multiple חטאת חייב, we separate between them to obligate a חטאת for each. (A single offense is defined by either one act, or multiple acts done בהעלם אחת - with one forgetting that such acts are forbidden)

We learn this out from *pesukim*. This holds true in cases where we have גופים מחולקים (even if there are not שמות מחולקים - such as a person who lived with נידות) or when we have שמות מחולקים (even if we don't have גופים מחולקים - such as a person who lives with one woman who is אחותו ואחות אביו ואחות אמו).

דף יד:

96. כל לא תעשה שקדמו עשה לוקין עליו

A מלקות that is has an עשה before it gets לאו.

We have previously (#32) learned that a לאו with a corrective עשה does not get מלקות.

However, this only holds true for an עשה that can only be done if the לאו was transgressed (such as burning the נותר or returning the stolen object). For in such cases we say the עשה was meant as a corrective measure. But, if the עשה is not contingent on transgressing the לאו (such as a person who became טמא while already in the בית המקדש, we would apply the עשה of וישלחו מן המחנה ("leave the camp") to such a person even though they did not transgress the לאו of walking into the בית המקדש when טמא) we would not consider such an עשה as necessarily corrective, and therefore the person would get מלקות if they transgressed the לאו of walking into the בית המקדש when they were טמא.

The gemarah uses this to explain why our Mishnah teaches that if one walked into the בית המקדש when they were טמא, they would get מלקות, and we would not consider the fact that there is an עשה to leave, as a לאו הניתק לעשה.

דף טו.

97. אם אינו ענין

If it does not apply.

Words in the Torah that may be extra, are learned as a דרשה. If the דרשה is not needed to teach any law in the place in which they were written, we say since they do not apply in this place we apply them to another place.

An example is in our gemarah, when we tried to say (eventually disproved) that the pasuk of לו קל מוציא שם רע (b/c we know מוציא שם רע through a קל) is extra and not applicable to אונס (to try and explain why אונס who remarries does not get מלקות even though it is a לאו שקדמו עשה which should get מלקות).

98. קיימו ולא קיימו - בטלו ולא בטלו

קיים (את העשה פטור) ו(אם) לא קיימו (חייב) - ביטל (את העשה חייב) ו(אם) לא בטלו (פטור)

If he fulfilled or did not - If he voided or did not

If one fulfilled the עשה he does not get מלקות, if he did not fulfill the עשה he does get מלקות - If one voided the עשה he does get מלקות, if he did not void it he does not get מלקות

There is an argument regarding the law of לוקין עליו. לאו הניתק לעשה אין לוקין עליו. According to the first opinion, the person would not get מכות only if they fulfilled the עשה immediately. If they did not fulfill the עשה they would get מכות. According to the second opinion, one would only get מלקות if they voided the possibility of fulfilling the עשה (such as destroying the stolen object so it could not be returned).

דף טו:

99. התראת ספק לאו שמיה התראה

Warning in doubt is not considered warning.

If one gives warning to someone about to do a sin, but the warning is not decisive, then, according to this opinion, he is not considered warned, and is not punished.

For example, if one would vow to eat food that day, and had not yet eaten, if he would receive warning to eat or receive punishment for breaking his vow, that warning would be indecisive, since he technically does not have to eat at that moment in order to not break his vow. By the time the day is over and he still has not eaten, he can claim he forgot the warning.

דף יח:

100. לאו הבא מכלל עשה, עשה ולא

A negative commandment learned through deduction from a positive commandment, is considered a positive commandment, and does not get lashes. A second opinion says it is considered a negative commandment.

The gemarah wants to use the second opinion to ask why a kohen who eats from a חטאת before זריקת הדם should not get מלקות. After all, the Torah allows a kohen to eat from a חטאת only after זריקה, inferring that before זריקה it is forbidden. The gemarah answers that the first opinion is correct, that even if it is forbidden, it still only has the power of an עשה, *not* a לאו. Therefore, it would not get מלקות. The gemarah proves this from the fact that the Torah tells us the kosher animals we can eat are those that have split hooves and chew their cuds. I could deduce that animals that do not have both signs are not kosher, and yet, the Torah continues to tell us that you may not eat animals that do not have both signs. The Torah, it seems, needed to repeat this in order to create a לאו, proving that the inference from the עשה would not make it a לאו.

101. כל הראוי לבילה אין בילה מעכבת

All that could be mixed, mixing is not mandatory.

If one dedicated a מנחה of 61 עשרון, he would be obligated to bring 60 in one כלי and 1 in another כלי. The reason for this is that you may only bring a maximum of 60 in a כלי since more than 60 will not mix together (בילה) with a שמן. לוג שמן. However, one could ask, why should the ability to mix bother us? For we know that mixing is not mandatory! To which we answer that even though the actual mixing is not mandatory, the ability to mix is mandatory.

The gemarah uses this to explain why it is possible to hold that קריית ביכורים is not mandatory, and yet hold that if one were to bring ביכורים after Sukkot they would not be accepted since he could not read פרשת ביכורים. The same logic would apply, reading the parsha is not mandatory, but the ability to read the parsha (bringing before Sukkot) is mandatory.