

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

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\* Revised Version of a Thesis submitted to the University of Manchester for the degree of Master of Arts, 2002.

ABSTRACT

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

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

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

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

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

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

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### ABBREVIATIONS

#### *Works*

JAAR

*Journal of the American Academy of Religion*

OED

*Oxford English Dictionary*

#### *Tractate Names*

Bekh.

Bekhoroth

B. K.

Baba Kamma

B. M.

Baba Metzia

Dem.

Demai

Hor.

Horayoth

Ker.

Kerithoth

Ket.

Ketuboth

Ned.

Nedarim

Shab.

Shabbath

Yeb.

Yebamoth

INTRODUCTION

1. *Explanation of the topic.*

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

What is Mishnah?

Rabbi Meir says, *halakhot*.

Rabbi Judah says, *midrash*.<sup>4</sup>

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

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

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

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

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

2 'Teachers' or 'repeaters'.

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

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

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

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

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

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

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

It is well known that the Mishnah generally does not tend to provide explanations accounting for the validity of its rules. At times however, a reason (טעם) is given.<sup>8</sup> This term, as Urbach points out, is used very rarely in *Tannaitic* literature: 'in the Mishnah the word *ta'am* in the sense of "reason" is used only twice';<sup>9</sup> the two cases mentioned by Urbach are Bikkurim 1:2 and Menahot 4:3.<sup>10</sup> This situation contrasts with what is found in the Talmud where 'there is hardly a page [...] on which the word *ta'am* or its Aramaic form, *ta'ma*, does not appear'.<sup>11</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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14 Ibid. pp. 40 f.

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

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

17 Ibid. pp. 27 f.

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

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

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

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

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

In what way does all this relate to the activity of giving reasons? Samely<sup>22</sup> draws a connection between the lack of abstract *halakhic* principles in the Mishnah and the paucity of *halakhic* explanations. He suggests that this could be aimed at saying that the 'ability to render new *halakhic* decisions or to contribute to the discourse of *halakhah* cannot be acquired from this text, or any text [...]. Instead, that competence must be acquired by a process of learning and imitation which cannot be reduced to a verbal representation. No understanding of the principles can be gained except through experience of the way they are applied in many different circumstances'.<sup>23</sup> On the other hand and somehow related to it, he argues that the choice of not providing principles and explanations could be part of a precise socio-political strategy aimed 'to prevent the unauthorized use of *halakhic* competence'.<sup>24</sup>

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

### 3. 'Norm' and 'reason': a definition

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

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

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

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

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

23 Ibid. p. 131.

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

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

26 Ibid. pp. 1077 f.

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

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

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

The *Oxford English Dictionary* provides twenty-three different meanings of the term and reports six synonyms of it. Some of them broadly fitted with what I was looking for in the Mishnah,<sup>29</sup> so I compared them with the definition given by Jastrow<sup>30</sup> for the term רעם to see whether or not there was a correspondence of meaning. The comparison allowed me to sense a possible discrepancy between our understandings of the term 'reason' and that (those) of the term רעם in the *Tannaitic* or *post-Tannaitic* period. In fact, all the definitions of 'reason' reported in the *OED* refer to the sphere of thought, while the root רעם displays a wider semantic and lexical range of meanings which also refer to the sphere of senses.<sup>31</sup>

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

Thus, the attention has been turned to three different attempts to define and classify what counts as a reason: the first is that of Gemser<sup>32</sup> who classified biblical motive-clauses according to contents.<sup>33</sup> As Samely points out, Gemser's categories 'give little guidance for classifying reasons<sup>34</sup> in the Mishnah'

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

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

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

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

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

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

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

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

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mainly because they rely ‘on culturally embedded differentiations which are unlikely to have been relevant to the biblical authors’.<sup>35</sup> The second attempt considered, that of the modern philosopher Charles L. Stevenson<sup>36</sup> proved more interesting and for many of his categories<sup>37</sup> it is possible to find examples in the Mishnah. Yet I did not always find it easy to apply Stevenson’s classification to the scrutinized material.

Frederick Schauer<sup>38</sup> adopts an interesting definition of reason in that he takes issue with the idea that ‘to *have* a reason for a decision is to have a good reason, and what some might think a bad reason is simply no reason at all’. He explains:

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

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

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

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

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35 Ibid. p. 126.

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

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

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

39 Ibid. p. 636.

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

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

42 Which he calls enthymematic, meaning by this elliptic.

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

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

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

#### 4. Brief methodological notes

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

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

The basic presupposition of this analysis, which will be performed in a synchronic mode,<sup>46</sup> is the existence of a close relationship between literary form and conceptual content<sup>47</sup> as the work of Jacob Neusner (among others) clearly postulated; in other words, since forms stand in a functional relationship, I am looking at the meaning through the form.

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

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44 Ibid. p. 221.

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

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

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

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

49 Ibid. p. 159.

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

# Reasons for Norms in Mishnaic Discourse

## PART I

### WORD ANALYSIS: GRAMMATICAL, SYNTACTICAL, AND SEMANTIC ASPECTS

#### 1. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 2. Reason-clauses. Analysis of selected examples

#### 2.1. ׀ and other causal conjunctions connected to ׀.

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

(1) B. M. 4:11

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

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

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

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

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

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

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

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

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

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

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

<sup>71</sup> In B. K. 2:5, the reason provided is clearly based on a קל וחומר argument although the expression itself does not appear.

<sup>72</sup> In Yeb. 2:3 the ‘general rule’ being placed at the beginning of the pericope is introduced by the formula בלל אמרו.

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

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

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

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

given apodictically in the main clause (A).

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

The next example taken from tractate Baba Kamma, reports one of the two cases encountered of reasons introduced by the conjunction  $\psi$  לִפְיֵי.

(2) B. K. 4:7

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

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

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

(D) **since** ( $\psi$  לִפְיֵי) they have no owner.<sup>78</sup>

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

## 2.2. מִשׁוּם

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

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

78 Danby.p. 337.

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

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

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

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

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

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(3) Yeb. 3:10

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

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

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

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

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

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

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

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

In this very interesting pericope there are four reason-clauses all introduced by the causal particle בְּטוֹבָה. In the first case (B) the reason-clause is directly attached to the main clause (apodosis), in the three other cases, the apodosis is elliptical and the reason-clauses are directly attached to the shifting situational parameters of the protasis displayed in (C), (D), and (E). In other words, in (C), (D), and (E) both a part of the protasis<sup>88</sup> and the apodosis, are not reported; the apodoses ('culpable') are implied and it is the presence of the reason-clauses which allows to understand them.

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

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

(4) B. M. 9:13

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

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

84 Ibid. p. 223.

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

86 Deut. 25:5 – 10.

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

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

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

### 2.3. הוֹאִיל ו

I have encountered the conjunction הוֹאִיל ו<sup>89</sup> only seven times in the tractates surveyed, six times in Yebamoth and once in Nedarim. Let us analyse the following example:

(5) Yeb. 15:5

(A) If one said,<sup>90</sup> 'He is dead', and the other said, 'He has been killed',

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

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

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

### 2.4. שְׁנֵאמַר

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

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

The anchor of this 'for' is in the present tense of the Mishnaic discourse, and it is in the present that Scripture speaks to the rabbinic reader. 'For it is said' means: if you understand the Lemma<sup>93</sup> properly, you have to accept the Dictum as valid. Without such a meaning the 'for' has no function. It invites the reader to read the Lemma in the light of the Dictum, to allow the sense of the Dictum and Lemma to converge.<sup>94</sup>

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

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

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

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

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

94 *Ibid.* p. 64.

























































































