

CHAPTER THREE

פֶּרֶק שְׁלִישִׁי

1. A person who does not acknowledge [the validity of] the Oral Law¹ is not the rebellious elder mentioned in the Torah.² Instead, he is one of the heretics³ and he should be put to death by any person.⁴

2. Since it has become known that such a person denies the Oral Law, he may be pushed into a pit and may not be helped out.⁵ He is like all the rest of the heretics who say that the Torah is not Divine in origin,⁶ those who inform [on their fellow Jews],⁷ and the apostates.⁸ All of these are not considered as members of the Jewish people. There is no need for witnesses, a warning, or judges [for them to be executed]. Instead, whoever kills them performs a great mitzvah and removes an obstacle [from people at large].⁹

3. To whom does the above apply? To a person who denied the Oral Law consciously, according to his perception of things. He follows after his frivolous thoughts and his capricious heart and denies the Oral Law first, as did Tzadok and Beitus¹⁰ and those who erred in following them.

[Different laws apply to] the children of these errant people and their grandchildren whose parents led them astray and they were born among these Karaites¹¹ and raised according to their conception. They are considered as children captured and raised by them.¹² [Such a child] may not be eager [to follow] the path of mitzvot, for it is as if he was compelled not to. Even if

1. Note the qualification of this matter in Halachah 3.

2. See Halachah 4 ff.

3. The Rambam defines the term *epicurus* (the term used here) in *Hilchot Teshuvah* 3:8. It appears, however, that here, he is not referring to the precise definition of that term, but rather to a more general conception of heresy. It must be noted that many of the authoritative manuscripts of the *Mishneh Torah* use the term *min* (see *Hilchot Teshuvah* 3:7).

4. As the Rambam continues to explain in the following halachah, a heretic should be slain. Any person may - and should - take the law into his own hands in this regard. There is no need to wait for judicial process.

5. Indeed, if the pit has a ladder, the ladder should be removed. Compare to *Hilchot Rotzeach* 4:10 which says that if it is possible, one should kill such individuals with a sword in public view.

6. I.e., there is no difference if the person denies the Oral Law or the Written Law.

7. People who seek to give gentile authorities control over the lives or the property of their fellow Jews. As stated in *Hilchot Chovel UMazik*:8-9-10, if possible, it is a mitzvah to kill such people, even in the era of exile.

8. As evident from the *Shulchan Aruch (Choshen Mishpat* 425:5), this term refers to people who transgress with the intent of angering God. If, however, a person transgresses because he cannot control his desires, these severe measures do not apply.

9. Compare to *Hilchot Avodat Kochavim* 10:1 which states that these individuals "cause difficulty to the Jews and sway the people away from God." See also the Rambam's

י שאינו מודה בתורה שקבעל פה - אינו נזון מקרא האמור בתורה;
הרי זה בכלל האפיקורסים, ונמיתו בכל אדם.

אחר שנתפוסם שהוא כופר בתורה שקבעל פה - ומורידו אותו ולא מעלין.
הוא קשאר כל האפיקורסים והאומרים מן השמים ותמוסרין ותמומין.
אלו אינם בכלל ישראל, ואין צורך לא עדים ולא דמים, אלא כל
עשה מעצמו גודלה והסיר תפוסולתו.

מה דברים אמורים? באיש שקפד בתורה שקבעל פה כמחשבתו וכדברים שפירא לו,
אחר דעתו תקלה ואחר שרירותו לפי, וכופר בתורה שקבעל פה מחלה, קצרות
ולו רק כל המועים אתרי.

בני תמועים האלה ובני בגיהנם, שהדיחו אותם אבותם, ונולדו בין תפוסים ומדלי
ם על דעתם - הרי הוא כתינוק שנשפה בגיהנם ומדליהו, ואינו נזון לאהו כדרכי
שורת, שהרי הוא כאנוס.

Commentary to the Mishnah (*Chullin* 1:2) where he states that the progenitors of dev
approaches should be killed for corrupting the Torah.

10. These were two of the greatest students of Antigonus of Socho. As the Rambam s
in his Commentary to the Mishnah (*Avot* 1:3), after they heard Antigonus teach: "Do
be as servants who serve their master for the sake of receiving a reward." they for
Jewish practice, saying: "Is it just that we labor without receiving a reward?"

They began splinter sects with the intent of swaying the people after them. At first,
sought to abandon Jewish practice entirely. They saw, however, the people would
accept this and so they focused their complaints on the Oral Law, arguing that altho
the Written Law was of Divine origin, the Oral Law was not. Their intent, however,
to deny the entire Torah. Similarly, the individuals mentioned by the Rambam deny
Oral Law *first*, i.e., their intent is to deny the entire connection with God and the T
11. The Karaites represented a sect of deviant Jews who followed the approach of Tz
and Beitus, rejecting the observance of the Oral Law although maintaining a ce
amount of deference to Jewish tradition. In the Rambam's era, they had won the allegi
of many of the Jews in Egypt and North Africa. Their belief, however, was
perpetuated and after a brief epoch in history, they ceased to exist in significant num
12. The concept of a child captured and raised by gentiles is found in *Shabbat* 68b,
explained that when such a child comes of age and later desires to atone for his con
he is required to bring only one sin offering for each transgression which he performe
matter how often he repeated it (in contrast to an ordinary person who must bring a
offering for every act of transgression he performs). He is judged more leniently and h
held fully responsible for his deeds, because he was raised in a non-Jewish environm
Similarly, the Rambam is postulating, the descendants of the Karaites should not be
responsible for their transgressions, for they were brought up in an environment that c
them away from the Torah and its mitzvot.

later, he hears that he is Jewish and sees Jews and their faith, he is still considered as one who was compelled [against observance], for he was raised according to their mistaken [path].¹³ This applies to those whom we mentioned who follow the erroneous Karaitic path of their ancestors. Therefore it is appropriate to motivate them to repent and draw them to the power of the Torah with words of peace.¹⁴

4. The "rebellious elder" mentioned in the Torah,¹⁵ by contrast, is one of the sages of Israel¹⁶ who has received the tradition [from previous sages] and who analyzes¹⁷ and issues a ruling with regard to the words of Torah as do all the sages of Israel. [His rebellion involves an instance when] he has a difference of opinion in one of [the Torah's] laws with the Supreme *Sanhedrin* and did not accept their views, but instead issued a ruling to act in a different manner.¹⁸ The Torah decreed that he should be executed. He should confess his sin [before being executed]¹⁹ [so that] he will be granted a portion in the world to come.²⁰

Even though he analyzes and they analyze; he received the tradition and they received the tradition, the Torah granted them deference.²¹ [Even] if the court desires to forgo their honor and allow him to live, they are not allowed, so that differences of opinion will not arise within Israel.

5. A "rebellious elder" is not liable for execution unless he is a sage, [erudite enough] to issue halachic judgments who has received *semichah* from the *Sanhedrin*²² and who differs with [that] court with regard to a matter whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering or with regard to *tefillin*.²³ He must direct others to act according to his ruling or act according to his ruling himself,²⁴ and differ with the *Sanhedrin* while they hold session in the Chamber of Hewn Stone.²⁵

When, by contrast, a student who has not attained [a level of erudition that enables him to issue] halachic rulings, but, nevertheless, issues a ruling, he is not liable. [This is derived from Deuteronomy 17:8 which] states: "If a matter of judgment exceeds [your grasp]...." [Implied is that the passage concerns] only [a scholar] who is unable to grasp something which is exceedingly [difficult to comprehend].²⁶

6. If a sage was an exceedingly great scholar and a member of a court and differed with [the Supreme *Sanhedrin*] and he returned home and taught others according to his [original] conception, but did not direct them to act

13. As reflected in the manuscript copies of the Rambam's Commentary to the Mishnah (*Chullin* 1:2), these words of patience and forbearance reflected a change in the Rambam's thinking. In his youth, he concluded his treatment of the subject without including them. When he rewrote his Commentary to the Mishnah in his later years and here in the *Mishneh Torah*, he felt it necessary to include them.

Contemporary Rabbinic experts have applied the Rambam's statements here to the question of how to deal with Reform and Conservative Jews today.

על פי ששמוע אחר פך [שהוא יהודי, וראוה ה'הודים ודקם - תרי הוא פאנום, ג'להוה על ששמועם]. פך אלו שאמרונו, תאחורים בודרי אבותם הקראים ששנו. פך ראי להחזיקו בהשוקה, ולקשקשם בדיברי שלום, עד שיהזורו לאיתן התורה.

קבל וקן מנרא האמור במונה הוא חכם אחר מתקמי ישראל, שיש בינו קבלה ונדן ה בדיבורי מורה פמו שידונו ויוורו פל תקמי ישראל, שבאח לו מקלקה בדין מן יום עם בית דין העולל, ולא חסר לזכריתם, אלא חלק עצליהם והורה לעשות שלא אמת - גורה עליו מורה מיתה. ומתורה, ויש לו חלק לעולם הבא. אך פל שהוא חלול וזניג, הוא קבלה קלה למה שחלטה ה'ה' המורה קלה למה שחלטה ה'ה' רצו ביה דין למחול ולקבלתו - אינו יכולין, פרי שלא ירבו מקלוקה ביישראל.

ו וקן מנרא חכם שיהיה עד שיהיה חכם שהגיע להורה סמוך בסנהדרין, ויחלק על דין בדין שידונו ברה ושגתו חשאת, או בהפלילן, ויוורה לעשות פהורה אחת או ה הוא על פי הורה, ויחלק עצליהו ודן ילשברן בלשפת הנהו.

אם הנה תלמיד שלא הגיע להורה והורה לעשות - פטור.
כי יפלא מקוד דבר למשפט - מי שלא יפלא מפניו אלא דבר מפליא.

ה חכם מפליא של ביה דין, וחלקו, ושנה ולמדו לאחורים פודרי, אבל לא הורה וות - פטור.

14. See the conclusion of the Rambam's *Iggeret HasShmad* where he also urges a like approach to sinners themselves, stating: "It is not appropriate to ostracize and detest who desecrate the Sabbath. Instead, one should draw them close and encourage them to perform mitzvot.... Even if a person transgresses intentionally, when he comes to synagogue to pray, he should be accepted and should not be abused."

15. Deuteronomy, ch. 17.

16. I.e., "the rebellious elder" must be a sage, as evident from the following halachah 17. I.e., derives concepts using the accepted principles of Biblical exegesis.

18. As illustrated in the following halachot.

19. As is required of all those who are executed; see *Hilchot Sanhedrin* 13:1.

20. In contrast, those who deny the Oral Law are not granted a portion in the world to come (*Kesef Mishneh*, based on *Hilchot Teshuvah*, ch. 3).

21. Stating that we must follow the rulings of the majority and not deviate from the majority.

22. As explained in *Hilchot Sanhedrin*, ch. 4.

23. See Chapter 4, Halachah 2. The Rambam's ruling is dependent on his understanding a difference of opinion among the Sages (*Sanhedrin* 86b, 87a).

Perhaps, *tefillin* are singled out, because "the entire Torah is equated to *tefillin* (*Malchut*).

24. If, however, he maintains that theoretically, the other sages are wrong, but refrains from giving a directive to others to act on his instructions and does not act upon himself, he is not liable, as stated in Halachot 6 and 8.

25. I.e., the chamber outside the Temple Courtyard where they would hold court (*Halachah* 7).

26. I.e., it does not apply to a scholar who lacks knowledge of more fundamental issues.

accordingly, he is not liable.²⁷ [This is derived from *ibid.*:12 which] states: "And the person who acts obstinately"; [i.e., the punishment is warranted] not for speaking obstinately, but for issuing a directive for action or for acting oneself.

6. If he found [the Supreme *Sanhedrin*] outside their place and rebelled against their [ruling], he is not liable. [This is derived from *ibid.*:8 which] states: "And you shall arise and ascend to that place," implied is that the place is the cause for capital punishment.

All of [the individuals mentioned above who are not executed] and anyone who acts in a similar manner, although they are not liable for execution, the Supreme *Sanhedrin* should place them under a ban of ostracism,²⁸ separate them from the community, subject them to corporal punishment, and prevent them from teaching their interpretation of the matter.²⁹

8. How is the law applying to a rebellious elder adjudicated? When a matter is undecided because of its difficulty and a sage who [is erudite enough] to issue rulings whether with regard to a matter which he arrived at through his own reasoning or which he received from his teachers, he and the sages who differ with him ascend to Jerusalem and come to the court which [holds sessions] at the entrance to the Temple Mount.

The court tells them: "This is the law." If [the elder] listens and accepts [the ruling], it is desirable. If not, they all go to the court which holds sessions at the entrance to the Temple Courtyard. They also say: "This is the law." If [the elder] listens and accepts [the ruling], they go their ways. If not, they all go to the Supreme *Sanhedrin* in the Chamber of Hewn Stone from which the Torah emanates to the entire Jewish people, as [Deuteronomy 17:10] states: "From that place which God has chosen." The [Supreme *Sanhedrin*] tell them: "This is the law" and they all depart.

If the elder returns to his city and continues [to interpret the law] as he did previously and teaches [his interpretation] to others,³⁰ he is not liable. If he gave a directive for action or acted [according to his conception] himself, he is liable for execution. There is no need for a warning.³¹ Even if he offers a rationale to explain his conduct, we do not heed him. Instead, once witnesses come [and testify that] he acted according to his own directive or that he directed others to perform a deed, we sentence him to death in his local court.³² We take hold of him and bring him from that place to Jerusalem. For we do not execute him in [the presence of] his local court, nor in the presence of [the Supreme *Sanhedrin*] who left Jerusalem, but instead, bring him to the Supreme *Sanhedrin* in Jerusalem. Until the [next] pilgrimage festival, he is kept

27. The classic example of this principle is Akkavya ben Mahallei who received four teachings from his teachers which - though they represented the majority views at that time - were not accepted by the majority of the Sages in the following generation. Akkavya refused to change his conception of these laws, and yet, in deference to the majority, did not issue rulings for action according to his conception. Moreover, before

מרי: והאיש אשר יעשה בדרך, לא שיאמר בדרך, אלא יורה לעשות או יעשה הוא לו.

אן חוזן למקומן והמקנה עצמיהן - פטור.
הרי: וקמף ועליה אל המקומם - מלמך, שהמקומם גורם לו מיתה.
אלא וכו' וצא בהן שהן פטורין מן המיתה, יש לבית דין הגדול לנדותם ולהפליגין ויתן למקומן מלמך, כפי מה שיתראה להן שהתברר צריך לקב.

יצא דין דין זמן ממנה? בעת שיפלא דבר ויורה בו חכם המגיד להוראה, בין ברב
הה בענין בין ברב שקבל מרבותיו - הרי הוא והחולקין עמו עליו לירושלם,
לבית דין שעל פתח הר הבית. אומרים להן בית דין: כך הוא הדין. אם שמע
- מושב; ואם לאו - באין כלי לבית דין שעל פתח העזרה, ואומרים להם גם
כך הוא הדין.

בלי - ילכו להן; ואם לאו - כלי באין לבית דין הגדול ללשכת המורה, שמשם
יוצאת לכל ישראל. שצאמר: מן המקומם שהוא אשר יבחר יי וביית דין אומר
כך הוא הדין, ויוצאין בלי.
הה חתם לעירו וישנה ולמך כדרך שהוא למוד - הרי זה פטור.
לעשות או שעשה כהוראתו - חייב מיתה, ואינו צריך התראה.
נתן טעם לדרך - אין שומעין לו.

כיון שבאו ערים שעשה כהוראתו או שהורה לאחרים לעשות - נוקרין דינו
הה בבית דין שבעיר, וחותפין אותו ומעלין אותו משם לירושלם.
הה מהמורה אותו בבית דין שבעיר, ולא בבית דין הגדול שיצא חוץ לירושלם, אלא
אן אותו לבית דין הגדול שבירושלם.

his passing, he advised his son to accept the ruling of the majority (*Editor*:
Sanhedrin 88a).

28. See *Hilchot Tahmud Torah*, chs. 6 and 7.

29. The *Maharitz Chayot* states that although this is a general guideline, in practice matter is left to the interpretation of every court. For that reason, Akkavya ben Mavus was not ostracized or subjected to corporal punishment. Since Akkavya sought to minimize the discord and the lack of respect for the court that could result from different approaches being taught, he was not subjected to punishment.

30. I.e., as an abstract concept without telling people that they should conduct themselves in this manner.

31. In contrast to other cases where capital punishment is administered (*Hilchot Sanhedrin* 12:2). This ruling represents a change from the Rambam's position in his Commentaries the Mishnah (*Sanhedrin* 11:2) where he states that such a warning is required.

32. For a court of 23 judges has the authority to issue sentences of capital punishment

under watch. During the pilgrimage festival,³³ he is executed by strangulation, as [implied by *ibid.*:13]: "And all Israel shall hear and become fearful." This indicates that [his execution] must be announced.

There are four transgressors whose [execution] must be announced publicly:³⁴ a rebellious elder, lying witnesses, a person who entices [others to worship idols],³⁵ and a wayward and rebellious son.³⁶ For with regard to all of them, the Torah states: "so that they will hear and become afraid."

CHAPTER FOUR

1. [A rebellious elder] who differed with the Supreme *Sanhedrin* concerning a matter whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering is liable for execution.¹ [This applies] whether [the court] forbids [the matter] and he permits it or [the court] permits the matter and he forbids it.² Even if he [bases] his statements on the received tradition, saying: "This is the tradition I received from my masters," and they say: "This is what appears to us as appropriate on the basis of logical analysis," since he differs with their ruling³ and performs a deed or directs others to do so, he is liable. Needless to say, this applies if they also rule on the basis of their having received teachings through the Oral Tradition.⁴

Similarly, he is liable for execution if he differs with them with regard to a decree that they issued [to safeguard a prohibition] whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering.⁵

33. When the entire Jewish people gather together in Jerusalem. There the announcement and the execution will attract the most attention.

As evident from *Hilchot Sanhedrin*, 11:2, 13:5, executions are not held on the sacred days of the festivals, but on Chol HaMoed.

34. The Radbaz explains that the execution of these four individuals is announced publicly, because in each instance, there is a rationale that might lead one to think that the transgression is not so severe: The rebellious elder did not actually commit a transgression; he merely instructed others to. The lying witnesses are not executed if the person was executed on the basis of their testimony, only when he has not yet been executed. Hence, one might think there is room for leniency. Similarly, as will be explained, the wayward and rebellious son is not executed because of the transgressions he performed, for stealing and eating gluttonously do not make him worthy to die. Instead, the Torah appreciates the ultimate outcome of his conduct. As such, there is room to argue that, at present, there is room for leniency. And the person who entices others to idol worship can argue that he himself did not commit the transgression. Hence, to make people aware that these transgressions are indeed severe, a public announcement is made.

35. The commentaries have noted that *Hilchot Avodat Kochavim*, ch. 5, where the Rambam discusses the laws pertaining to someone who entices others to worship idols, does not mention that the execution of such a person is announced publicly. They explain that perhaps he relied on his statements here.

36. The commentaries note that *Hilchot Eduv* 18:17 (which speaks about the announcement of the execution of lying witnesses) and Chapter 7, Halachah 13, of these halachot (which speaks about the announcement of the execution of a wayward and rebellious son) do not mention that these individuals should be executed during a

שעתלך על בית דין הנבדל בדרך שתחבניך על זרדנו ברת ועל שנגזרו תשאתא, ביי
 תנן אוסרים והוא מתערך ביי שרתיו תן מתערך והוא אוסר - תרי זה תרי מריב מריב.

ה שרתין תכורה: תן ממנא, וערים זממין, ותפיסית, וכן סורר ומורה; שרת
 גאמרי: לשמעו ויראו.

פרק רביעי

שעתלך על בית דין הנבדל בדרך שתחבניך על זרדנו ברת ועל שנגזרו תשאתא, ביי
 תנן אוסרים והוא מתערך ביי שרתיו תן מתערך והוא אוסר - תרי זה תרי מריב מריב.
 הוהוה תיה אוסר מפי תקבלה, ואמר: כן קבלתי מרבותי, והן אומרים: כן נראה
 ו שרתין נותן, הואיל נתן ועליו פרכך, ועשה או שוהוה לעשות - תרי זה
 ורין לומר אם הם מורים מפי תקבלה.

ב תלך עלקים בגזרה מן הגזרות שגזרו בדרך שיש פשגגותו תשאתא וזרדנו ברת,
 pilgrimage festival. Instead, they state that a proclamation concerning these individuals
 execution should be circulated among the Jewish people. This has led the *Kesef Mishneh*
 to conclude that according to the Rambam, only the rebellious elder must be executed
 that time. This view is supported by an opinion in the *Tosefta* (*Sanhedrin* 9:1).⁶ (C
 however, point to another opinion in the *Tosefta* (*ibid.* 11:3) which states that a
 individuals should be executed on a pilgrimage festival.

1. *Sanhedrin* 87a derives this concept through accepted techniques of Biblical ex
 There are two different opinions concerning the extent of the difference of o
 between the elder and the court in that Talmudic passage. In this and the follo
 halachah, the Rambam follows one opinion (that of Rabbi Meir) and Halachah
 rulings relate to the other one (that of Rabbi Yehudah). See the notes to that halach
 2. This underscores that the reason he is executed is that he is undermining the au
 of the court, not because he is causing others to commit a serious transgression.
 3. Our translation differs slightly from the standard published text of the *Mishneh*
 and is based on authoritative manuscripts.
 4. But they maintain that the tradition is different than that maintained by the reb
 elder.

5. The Rambam's position is not accepted by all authorities. The Rambam, in his *H*
 to *Sefer Hamitzvot*, General Principle 1, states that a sage is never considered a reb
 elder because of a difference of opinion with regard to a question of Rabbinic Law
 there is no point of Rabbinic Law whose willful violation is punishable by *kerait*
 whose inadvertent violation requires a sin offering. *Kerait* and sin offerings are r
 only when speaking about Scriptural prohibitions.

The Radbaz supports the Rambam's position, explaining that since the prob
 against *chameitz* itself is punishable by *kerait* or a sin offering, the Rabbinic safe
 against this prohibition also are included in this category. The *Kesef Mishneh* ex
 that these Rabbinic safeguards could lead to a situation whose willful violat

For example, if he permits the consumption of leaven on the fourteenth of Nissan during the sixth hour or forbids deriving benefit from it in the fifth hour,⁶ he is worthy of execution. Similar laws apply in all analogous situations.

2. [The above applies] whether [the rebellious elder] disputes a matter whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering or he disputes a matter which leads to [a situation involving a prohibition] whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering.

What is implied? If they disputed whether relations with a woman are adulterous or incestuous,⁷ if a shade of blood would render a woman ritually impure or not, if [a woman] is impure because of birth or not, if a woman is a *zavah*⁸ or not,⁹ if this fat is forbidden or permitted and the like, their difference of opinion involves a prohibition whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering.

What is meant by a matter that will lead to [a prohibition] whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering. For example, [the Sages] differed concerning the declaration of a leap year. If the leap year must be declared before Purim or may be declared throughout Adar,¹⁰ he is liable. For this leads to partaking of *chametz* on Pesach.¹¹ Similarly, if they differed with regard to a matter of financial law or with regard to the number of judges able to adjudicate matters of financial law, he is liable. For according to the opinion which maintains that [the defendant] is liable to [the plaintiff], everything which he expropriated from him was expropriated according to law and according to the decisions of the court. But according to the opposing view, whatever he expropriated is stolen property. If he uses it to consecrate a woman, she is not consecrated.¹² And yet according to the opinion that the person expropriated his own property, [the consecration is valid]. If another person engages in relations with her willfully, he is liable for *kerait* and if [he engages in relations with her] inadvertently, he is liable to bring a sin offering. Thus [their difference of opinion] led to a matter whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering.

punishable by *kerait* and whose inadvertent violation requires a sin offering. If a man consecrates a woman with *chametz* in the fifth hour of the day on the fourteenth of Nissan, according to our Sages, the woman would be consecrated, while according to the rebellious elder, she will not be. Relations with this woman is a matter whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering. 6. As stated in *Hilchot Chametz UMatzah* 1:8-9, the Torah prohibits partaking of *chametz* from midday of the fourteenth of Nissan onward. As a safeguard for that prohibition our Sages decreed that it is forbidden to partake of *chametz* from the beginning of the fifth hour of that day and it is forbidden to benefit from it from the beginning of the sixth hour of that day. If the rebellious elder issues directives that conflict with this decree, he is liable.

והזהיר והתחזק ביום ארבעה עשר בירסן פשעה ששירת, או אסרו בתנאף פשעה ת - הרי זה חייב מיתה. וכן כל פולצא ביה.

שענהלקו ברכך שתתביץ על דונו ברת ועל שנגמתו חטאת, או שענהלקו ברכך לדיך ברכך שתתביץ על דונו ברת ועל שנגמתו חטאת.

מנהלקו באשה זו אם היא ערוה אם לאו, אם מרואה דם זה מטמא באשה או לא, אם וצאא באלו - הרי חולק ברכך שתתביץ על דונו ברת ועל שנגמתו חטאת.

ברכך המביא לדיך ברכך שתתביץ על דונו ברת ועל שנגמתו חטאת? וברכך המנהלקו בעבדו אשה, אם מעצברים עד תפורים או בכל אבר - הרי זה חייב; שיהו

ז - הרי זה חייב; שתהי לזכריו של זה שאומר שיהו חייב לזה, כל שעטל מהנהו - טל, ועל פי בית דין נטל;

וירי של זה שאומר פטור, או שאומר שאירי אלו ראויין לדין, כל שעטל - נטל הוא וירי וקראו בו אשה - ארקה מקדשת;

וירי האומר שלו נטל, הבא עליה מקוירי - עניש ברת, פשונוג - חייב חטאת; והרכב מביא לדיך ברכך שתתביץ על דונו ברת ועל שנגמתו חטאת.

7. As an example of such a difference of opinion, *Sanhedrin* 87b speaks of a person has relations with a daughter born from a woman whom he raped. Since the prohibition against relations with a daughter is not mentioned explicitly in the Torah (- it is inferred from the prohibition against relations with one's daughter's daughter), the room for a rebellious elder to argue that such relations are not punishable by *kerait* Similarly, in all the cases that follow, *Sanhedrin, loc. cit.*, gives examples of the differences of opinion that could arise. We will not explain all these hypothetical situations. A reader who is interested in those details should consult that source.

8. A condition involving vaginal bleeding at times other than a woman's menstrual Such bleeding renders the woman ritually impure.

9. In these three instances, if the woman is impure, relations with her involve transgression whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering.

10. The latter view represents the halachah.

11. For the month the majority of Sages consider as Nisan will I be according to the rebellious elder. And the month the Sages consider as Nisan will I be for him. Thus he will - or instruct others to - partake of *chametz* on Pesach. Hence difference of opinion ultimately leads to a transgression whose willful violation is punishable by *kerait*.

12. Since the object used to consecrate her did not belong to her prospective husband, consecration is not valid. For the stolen article must be returned and thus she received anything for consecration.

Similarly, if their difference of opinion concerned lashes, if one person was liable to receive lashes or not, or they differed with regard to the number of judges in whose presence lashes must be administered, he is liable. For according to the opinion which says that he should not be lashed, [the court] is injuring him and [the judges] are liable to make financial restitution. Anything expropriated from them is taken according to law. But according to the opinion which says that he is liable for lashes, everything he expropriates from them is stolen property. If he uses it to consecrate a woman, she is not consecrated.¹³

Similarly, if they differed with regard to whether or not a person is obligated to pay [after making] endowment evaluations¹⁴ or interdicted property,¹⁵ he is liable. For according to the opinion that says that he is not liable to pay, if it is taken from him, it is stolen property and if it is used to consecrate a woman, the consecration is not valid.

Similarly, he is liable if he differed [with the majority] concerning the redemption of consecrated property, had it been redeemed or not.¹⁶ For according to the opinion that the redemption is invalid, if [he used that article] to consecrate a woman, the consecration is not valid.

Similarly, if they differed with regard to bringing an *eglah arufah*,¹⁷ whether a city is obligated to bring or not, he is liable. For according to those who say [that city] is obligated to bring [the calf], it is forbidden to derive benefit from it and if he uses it to consecrate a woman, the consecration is not valid. Similar [concepts apply] if they differed with regard to *orlah*.¹⁸ And similar concepts apply with regard to *leket*,¹⁹ *shichechah*,²⁰ and *pe'ah*.²¹ If they differ whether it belongs to the poor or to the owner, he is liable. For according to the opinion which says that it belongs to the owner, it is stolen property in the hands of the poor and if one consecrates a woman with it, she is not consecrated.

Similarly, if [the rebellious elder] differs with the court with regard to a category of factors that impart ritual impurity, e.g., blemishes on the skin,²² blemishes on homes,²³ or blemishes on garments,²⁴ he is liable. For according to the opinion that the person is pure, he is permitted to enter the Temple and partake of consecrated foods, but according to the opinion that he is impure, if he enters [the Temple] or partakes [of consecrated food] willfully, he is punishable by *kerait*, and [if he does so] inadvertently, he is liable for a sin

13. While, according to the other opinion, the consecration is valid and relations with her involve a prohibition whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering.

14. E.g., they differed about the endowment obligation of a child less than a month old, must the child's worth be given or not? See *Sanhedrin* 88a.

15. E.g., they differed if interdicted property (*cherem*, see Leviticus, ch. 27, *Hilchot Arachin V'Charamin*, ch. 6) whose objective was not specified should be given to the Temple treasury or to the priests. According to the opinion that it should be given to the

אם מהלקו בדיני ממונה, אם זה חייב מלקוח או אינו, או שחלקו במנן הדיני שולקין וזהם – הרי זה חייב; שיהיו לדיןי האומר אינו לזקה – חולקין הם בו, והביני לשלם, ודיןי שישל מנה – פדין נוסף; ולדיןי האומר מן מלקוח הוא, כל שישל מנה – מנה הוא ויא, ויא קדיש בו אשה – אינה מקדישת.

אם מהלקו בערבין או בערמין, אם זה חייב לתן או אינו – הרי זה חייב; מקדישת – יי לדיןי האומר אינו לתן, אם לקחה מאנו – הרי זה מנה, והמקדיש בו אשה – מקדישת.

אם חלק ערלהו בקדיין קרשים, אם נפרד או לא נפרד – הרי זה חייב; שיהיו חלקי האומר אין זה פדיון, אם קודש בו אשה – אינה מקדישת. וכן אם מהלקו רפת העגלה, אם אלו חייבין להביא או לא – הרי זה חייב; שיהיו לדיןי האומר מ להביא – הרי היא אסורה בהנאה, והמקדיש בו אשה – אינה מקדישת. וכן אם מהלקו בעולה, וכן אם מהלקו בקט שקחה ופאה, אם זה עניינים או לפעל הפיח הרי זה חייב; שיהיו לדיןי האומר לפעל הפיח – הרי זה מנה פרי העני, ואם קודש אשה – אינה מקדישת.

אם חלק ערלהו חלק ערלהו מאב מאבות השמאה, כגון נגעי פשר או נגעי פתים או נגעי פתים – הרי זה חייב; שיהיו לדיןי האומר שחור – מותר להפנס במקושי ולאכל קודשים; ולדיןי מר שמא, אם נכנס או אכל פמזיר – ענוש פרה, וכשונוג – חייב תשאת.

priest, it is his private property and can be used to consecrate a woman, while according to the other view, if it is used to consecrate a woman, the consecration is not valid. 16. I.e., their difference of opinion concerned whether the evaluation of the consecrated article's worth was carried out according to required principles and the redemption valid, or whether those requirements were not met, and hence the redemption was invalid. (*Sanhedrin, loc. cit.*)

17. A calf whose neck is broken to atone for an unsolved murder (see Deuteronomy 21).

18. The fruits produced by a tree in the first three years after it was planted. It is forbidden to benefit from these fruits. Hence according to the opinion that they are forbidden, if are used to consecrate a woman, the consecration is not valid.

19. Produce which falls from the reapers' hands that must be left for the poor (Leviticus 19:9, 23:22).

20. Produce forgotten by the reapers which must be left for the poor (see Deuteronomy 24:19).

21. The corners of the field which must be left for the poor (see Leviticus, *loc. cit.*). 22. The Ramban is referring to blemishes caused by *tzara'at*, a spiritual affliction resembling leprosy. See Leviticus, chs. 12-13. These blemishes render a person ritually impure.

23. As related in Leviticus, ch. 14, *tzara'at* can also affect a building. In such an instance anyone who enters the building becomes ritually impure.

24. Similarly, as stated in Leviticus, ch. 13, *tzara'at* can also affect a garment which turn can convey ritual impurity upon a person.

offering. Similar concepts apply if they differed with regard to the purification of a person afflicted by *tzara'at*, if he can be purified or not.²⁵

Similarly, he is liable if they differ with regard to the obligation to make a *sotah* drink [the water which conveys the curse].²⁶ Is a woman required to drink [the water] or is she not required? For according to the person who says that she must drink, if her husband dies before she drinks, she is forbidden to her *yevam*,²⁷ while according to the person who says that she is not required to drink, she may perform the rite of *yibbum*.²⁸ Similar laws apply in all analogous situations.

It is necessary to investigate and examine whether a difference of opinion will lead to these consequences. If it will lead to another consequence which - after a series of even 100 consequences - will bring about a situation involving a prohibition whose willful violation is punishable by *kerait* and whose inadvertent violation requires a sin offering, the [rebellious] elder is liable. [This applies] regardless of whether he ruled leniently and the others ruled stringently or he ruled stringently and they ruled leniently.²⁹

3. If the difference of opinion between [the rebellious elder and the court] will not lead to such a situation, [the rebellious elder] is not liable [for execution] unless [the difference of opinion] concerns *tefillin*.³⁰

What is implied? [If the rebellious elder] gave a directive to add a fifth compartment to *tefillin* making five compartments, he is liable. [This applies] provided he first made four compartments as required by law and then made a fifth compartment and attached it to the outer [compartment]. For when an outer compartment is not exposed to open space at all times, it is unacceptable.³¹

The obligation of a rebellious elder in such a matter is a law transmitted by the Oral Tradition. If, however, they differed with regard to other mitzvot, e.g., he disputed one of the laws concerning a *lulav*, *tzitzit*,³² or a *shofar*, one claiming that it is unacceptable and the other claiming that it is acceptable,

25. For the same question, can that person enter the Temple and partake of consecrated foods, applies.

26. When a husband suspects his wife of committing adultery, he may warn her not to enter into privacy with a given man. If she violates this warning, she is given special water to drink. If she is in truth guilty of infidelity, she will die as a result of drinking this water. See Numbers, ch. 5.

27. The brother of her husband who must marry her if her husband died childless. See Deuteronomy, ch. 25.

28. The *Kesef Mishneh* questions the Rambam's statements, noting that although a *sotah* is forbidden to her *yevam*, that prohibition is not punishable by *kerait*, merely by lashes. (See *Hilchot Yibbum Vichalitzah* 6:19 which bears out that statement.) The *Kesef Mishneh* does not offer a resolution to the matter. Note the *Merkavat HaMishneh* who does, suggesting a situation that depends on an understanding of the intricacies of the laws regarding *yibbum*.

29. For as mentioned, our worry is not that he is releasing a stringent prohibition, but that

פרק ד
אם נתחלקו בטהרת או אינו לול. וכן אם נתחלקו בטהרת
אם זו צריקה לשמות או אינה צריקה - תרי זה חביב - שתרי לרבי האומר צריקה,
מת הפעל קדם שמשפחה - תרי זו אסורה לרבמה; ולרבי האומר אינה צריקה -
ברבי.

כל פיצא פנה - צוריקן לרבן ולחוקר אם היתה מחלקת זו מביאה לירי דבר זה,
לר זה מביא לירי דבר שני, אפלו אחר מאה דברים, אם יבוא פסוף לרבי שדורו
זו ושבגתו חפאת, פין שתריה הנון מקל והו מחוקירין פין שתריה הוא מחוקיר והו
לר - תריב.

אם לא

הדי? הורה להוסיף טושפת תמלישית בהפלין ורעשנה תמש טושפות - תרי זה חביב
שא שיעשה בהחלה ארבעה בתים בהלכתו זה, וביא תמלישית וידבק בחיצו; שנתביא
יצוין שאינו רואה את האורר - תמיד פסול.

הוב וקן ממרא על דבר זה - תלקה מפי תקבלה. אכל אם נתחלקו פשאור מצות,
שחלק בדרך מדיבר ללב או ציציית או שפר, זה אומר פסול, וזה אומר פשר

his directives will spur controversy among the Jewish people and prevent there being unified halachic consensus (Radbaz).

30. As mentioned in the notes to Halachah 1, there are two different opinions in *Sanheda* 87a with regard to when a rebellious elder becomes liable. In Halachot 1 and 2, Rambam followed one opinion (that of Rabbi Meir). Here his rulings relate to the other one (that of Rabbi Yehudah).

The Ra'avad differs with the Rambam, maintaining that the different opinions conflicting and cannot be reconciled with each other. The Radbaz and the *Kesef Mishneh* justify the Rambam's position.

31. Rabbi Elazar in the name of Rabbi Ushia explains Rabbi Yehudah's perspective follows: "He is not liable unless [the difference of opinion] concerns a matter that is fundamentally from Scripture, but whose interpretation is Rabbinic. It must be able to go to our Sages' [interpretation of how to observe the mitzvah], and that addition must degrade and disqualify the mitzvah."

If at the outset, the person made five compartments, he is not making an addition that degrades; he is not fulfilling the mitzvah in the proper way from the outset. In that instance, however, the four compartments make the *tefillin* acceptable. By adding the fifth compartment in the manner described by the Rambam, he disqualifies one of the four, thus making the *tefillin* unacceptable.

32. For unlike *tefillin*, with regard to these mitzvot, they are either acceptable or unacceptable from the outset, there is no concept of it being acceptable and then being disqualified. For to add a new strand *tzitzit* or a new species to the four for the *lulav*, would have to undo the existing bond. And the new bond would not be acceptable from the outset (Ra'avad).

The Radbaz emphasizes that although the elder is not judged as rebellious for issuing such rulings with regard to *tzitzit* and a *lulav*, if one adds a strand or another species, does violate the prohibition against adding to the Torah's commandments.

one claiming that the person fulfilled his obligation and the other claiming he did not fulfill his obligation, or one says: "He is pure," and the other says: "He is impure two degrees removed,"³³ [the elder] is not liable for execution.³⁴ Similar laws apply in all analogous situations.

CHAPTER FIVE

1. A person who curses his father and mother should be executed by stoning,¹ as [Leviticus 20:9] states: "He cursed his father and his mother; he is responsible for his death."² He is stoned to death whether he curses them while alive or after they died.³ It is necessary that [his act be observed by] witnesses⁴ and [they] warn [him] as is required with regard to other individuals executed by the court.⁵

The above applies to both a man and woman, and also to a *tumtum*⁶ and an *androgynus*,⁷ provided they reached majority, the age when they can be subjected to punishment.⁸

2. A person is not liable for execution by stoning unless he curses [his parents] with one of God's unique names.⁹ If he cursed them with another term used to refer to Him,¹⁰ he is not liable for execution by stoning. He should, [however,] be lashed, as he would be lashed for cursing any other proper Jew.¹¹

3. Similarly, a person who curses his paternal and maternal grandfather¹² is considered as if he cursed any other person.¹³

4. What is the source which serves as a warning¹⁴ against cursing one's father and one's mother? We have heard the punishment explicitly stated,¹⁵ the warning, [however, is not stated explicitly]. [Instead,] it can be inferred from

33. I.e., he came in contact with an article or a person that came in contact with a source of ritual impurity. As the Rambam states in *Hilchot B'vat Hamikdash* 3:15, if a person enters the Temple after coming into such contact, he is not liable for *kerait*.
34. He should, however, be punished in other ways, as stated in Chapter 3, Halachah 7.

1. *Sefer Hamitzvot* (negative commandment 318) and *Sefer HaChinuch* (mitzvah 260) count the prohibition against cursing one's parents as one of the 613 mitzvot of the Torah. The Radbaz emphasizes that a person who curses his parents is given a more severe punishment than one who strikes them, because by cursing them he also mentions God's name in vain.

2. *Sanhedrin* 60a derives the obligation for this penalty from an analogy established between this verse and Leviticus 20:27 which mentions stoning explicitly.

3. For even after a person's death, cursing him brings negative consequences to his soul, his home, the Torah would not require witnesses for it is unlikely that they be present.

Hence the Rambam adds this clarification (*Kessef Mishneh*).

מִן הַיָּצָא הַיָּד הַזְּכוּתוֹ, וְזוֹה אוֹמֵר לֹא יָצָא, וְזוֹה אוֹמֵר שֶׁנִּי לְטַמְאָה – הַרְיָ טוֹר מִן הַמִּיתָתָהּ. וְכֵן כֹּל פְּלוּעָה בְּזוֹת.

פְּרִיק תְּמִישִׁי

אֲבִיר וְאִמּוֹ – נִקְלָה; שְׁנֹאמָה: אֲבִיר וְאִמּוֹ קָלִיל, וְקָרִי בּוֹ. וְאֶחָד מִקְּלָלָהּ אוֹ לְאֶחָד מִיִּטְמֵן – הַרְיָ זֶה נִקְלָה. וְצָרִיךְ עָרִים וְהַתְּרָאָה, פֶּשֶׁעַר כֹּל מִזְבֵּי הַיָּד בֵּית דִּין.
הָאִישׁ וְאֶחָד הָאִשָּׁה, וְכֵן הַטְּמָטְמוֹת וְהַתְּנִידוּתִים. וְהוּא שְׂוִיהֵי גְדוּלָּה שֶׁהִגְדִּירָהּ תְּעִישִׁין.

וְזוֹתָהּ שֶׁל מִקְּלָל אֲבִיר וְאִמּוֹ מִצְוָה? עֲנִישׁ שְׂמֵעֵינוּ פְּפוּשֵׁי, אֶבֶל הַזְּכוּתָהּ הַרְיָ הִיא
זֶה מִקְּלָל אֲבִיר וְאִמּוֹ אֶחָד מִשְׂאֵר הַקְּהָל.
אֶבֶל אִם קָלִיל כְּכֹנֵי – פֶּשֶׁעַר מִיִּשְׂרָאֵל.

5. See *Hilchot Sanhedrin* 12:2.
6. A person whose genital area is covered by a piece of flesh which prevents us from seeing his gender.
7. A person who has both male and female genital organs and whose gender is thus unresolved matter.
8. I.e., twelve for a girl, thirteen for a boy and for a *tumtum* and *androgynus*.

9. I.e., the seven names of God that may not be erased. See *Hilchot Yesodei HaTorah* 6:2.
10. E.g., the Merciful One, the All-Knowing, or the like. Compare to *Hilchot Sh'v'it* 2:2.
11. I.e., a person who observes the Torah and its mitzvot.

The Rambam mentions the prohibition against and the punishment for cursing a Jew in *Hilchot Sanhedrin* 26:1. In 26:3, he mentions that one is also liable for cursing when using a descriptive term for God.
The *Kessef Mishneh* notes that the Rambam's ruling here represents somewhat a contradiction to his ruling in *Hilchot Avodai Kochavim* 2:7.

12. Or grandmother.
13. I.e., he is lashed, not executed. As the *Kessef Mishneh* states, a person does not curse his grandfather the same measure of honor he owes his parents.
14. I.e., an explicit negative command. For there is no verse which states: "Do not curse your parents."
15. In the verse from Leviticus cited in Halachah 1.