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Rules of Derivation - 17

As a general principle, it is safe to contend that drash has two major purposes:

A. As a means of reconstructing the forgotten source of accepted halachos.

B. As a means of showing that a halachic practice is consistent with the Torah.

The first formulation of a system of rules through which halakhah could be derived from the Torah was made by Hillel. His seven rules of derivation (see Tosefta, Sanhedrin 7: I I) were not his creation. Rather, he formulated existing rules that were a part of the oral tradition. At the time of the destruction of the second Beis ha-Mikdash, two other rules of derivation were formulated by R. Nechunyah ben Hakanna and Nachum Ish Gamzo.

R. Yishmael ben Elisha, a disciple of R. Nechunyah ben Hakanna, reformulated the rules of derivation into thirteen principles. His formulation is based on the principle (Sanhedrin 64b) "that the Torah uses the language of man:' i.e., not every word of the Torah is necessarily open to interpretation and/or deduction, for words or letters might well have been employed for "literary" and stylistic purposes. However, the method with which the Torah expressed laws could be used as a means of reconstructing the halachah - e.g., *klal uprat*. In R Yishmael's view then, the words themselves might not serve as a source for derivation, in that they may serve other purposes, but the form and structure in which they are used can be employed as a means of deduction. His colleague, R. Akiva, contested this view as will be seen.

17.1 The Thirteen Principles of R.Yishmael
R.Yishmael's formulation of the rules of derivation can be subdivided into two categories:

A. ***Midrash Hamekish*** -derivations based on comparisons.
B. ***Midrash Hamevaer***- derivations based on textual explanations.

The following are the rules of derivations based on comparisons:

17.1.1 KalVachomer An a fortiori assumption, i.e., if the known laws applying to X are more stringent than those that apply to Y, then a stringency that applies to Y is surely true of X. The converse of this assumption is also valid. Thus, if X is more stringent than Y, then a leniency that applies to X is surely true of Y.

We find that the Torah itself uses *kal vachomer*. The verse (Devarim31:27) states: *And if when I was alive among you, you rebelled against Hashem, surely after my death [you will do so].* The sages (Bereishis Rabbah 92) note ten examples of *kal vachomer* that appear in Tanach.

As noted, *kal vachomer* can be used in either direction; i.e., to apply a leniency to Y based on its being true of X, or to apply a stringency to X based on its being true of Y. For example, the restrictions regarding forbidden types of work are more extensive as regards Shabbos than as regards the Festivals. Thus, Shabbos

can be seen as being more stringent than the Festivals. It therefore follows that if a specific type of work is forbidden on the Festivals, it would surely be forbidden on Shabbos. Conversely, if a specific type of work is permitted on Shabbos, then it would follow that this type of work would surely be permitted on the Festivals.

While it would seem that *kal vachomer* is a purely logical process - and thus should not be included as one of the principles of derivation - it is included as such since its use is predicated on a base whose law is known from the Torah. This base law is then compared to another law, giving us information about the latter.

Because *kal vachomer* is a logical process, it can be used by a sage without him having to first establish that it is based on a received tradition. Hence, another sage can contest its validity by refuting the underlying logic. The use of *kal vachomer* presupposes that all of the relevant halachos are known to the person making the *Kal vachomer*; otherwise his assumption that the basic law is either more stringent or lenient than the derived law might be mistaken. There are a number of other restrictions that govern the use of *kal vachomer*.

A. Dayo Lavo Min Hadin Lihyos Kanadun -the derived law must be equivalent to the law from which it was derived; i.e., if we apply a law to X based on its being true of Y, the application to X cannot be any more stringent than it is for Y.

For example, the Mishnah (*Bava Kamma* 2:5) discusses the extent of liability X has if his ox causes damage to V's ox in the latter's domain. The sages maintained that X is liable for half damages - which would be the case if X's ox had damaged Y's in the public domain –whereas R. Tarfon maintained that he must pay full damages.

R. Tarfon argued that the law of damages in the public domain had to be seen as being less stringent than the law of damages done within Y's domain. If X's ox ate or trampled V's property within the public domain, X would not be liable, whereas he would be liable for full damages if his ox did so in Y's domain. Hence, damages done by X's ox in Y's domain should be seen as being more stringent than damages done in the public domain. Logically then, in a situation where X would be liable for half damages in the public domain - i.e., if his ox gored Y's - he would be even more culpable if that same type of damage was done in Y's domain and should pay full damages.

The sages answered that since the liability of X for the damages his ox had done by goring Y's ox in Y's domain was derived from the known law of goring in the public domain, the extent of his liability in the latter case could be no greater than they are in the former case. The derived law -goring in Y's domain - could be no more stringent than the base law - goring in the public domain. Consequently, just as X was liable for half damages in the public domain, he could only be liable for half damages if the goring took place in Y's domain.

B. *Kal vachomer* is limited to Torah law. Since the basis of many Rabbinic ordinances is the desire to erect a protective fence around the Torah - *seyag* in talmudic terminology - a specific stringency enacted in one case cannot be assumed to be applicable in another case, for the rabbis might not have seen a need to be stringent in the latter situation.

For example, the Mishnah (*Yadayim* 3:2), in discussing levels of ritual impurity, quotes the opinion of R. Yehoshua that when a hand with a second level of ritual impurity comes into contact with the other hand, the latter is considered to have a second level of ritual impurity. The sages maintained that a second level of

impurity cannot affect something else. R. Yehoshua argued that we had seen that the sages had elsewhere decreed that something judged to have a second level of ritual impurity could affect an object with which it came into contact. The sages answered that one cannot draw analogies between laws of the Torah and rabbinic decrees nor between one rabbinic decree and another.

C. *Kal vachomer* is not used to draw a comparison from a law based on halachah le-Moshe mi-Sinai.

For example, the Talmud (Nazir 57a) discusses the question of whether a nazir becomes ritually impure if he comes into contact with a revi'is of blood. R. Akiva maintained that he would, utilizing a *kal vachomer* analogy. R. Eliezer answered that the *kal vachomer* analogy could not be used. R. Yehoshua explained that R.Akiva's *kal vachomer* could not be used because it was based on a comparison to a law based on a halachah le-Moshe mi-Sinai.

D. Bin Onshin Min Hadin - *Kal vachomer* cannot be used to establish punishment; i.e., the penalty imposed upon one who violates the original law cannot be assumed to apply to the derived law.

For example, the Talmud (Sanhedrin 74a) questions whether one is permitted to kill a person to prevent him from worshiping idols. R. Shimon maintains that one may do so and employs the following *kal vachomer*. If one is permitted to kill a rapist to prevent him from defiling a woman, one is surely permitted to kill an idolater to prevent him from defiling the honor of God. The Talmud rejects this analogy, rhetorically asking, "Can punishment be derived through a *kal vachomer*?"

17.1.2 *Gezerah Shavah* An analogy based on the use of the same term in two separate cases. When the Torah utilizes a specific term in one case and then uses that same term in another case-even though the latter has no logical relationship to the former-we can draw an analogy between the two laws. Use of this principle allows for the creation of an entire halachic system based on a minimum of text.

On the surface, *gezerah shavah* would seem to be completely illogical—as if we were drawing an analogy between the traits of fruits and vegetables. However, if one accepts the axiom that the Torah does not use superfluous words, one can conclude that the repetition of a specific term in another context is an indication that a comparison can be drawn.

There are two types of *gezerah shavah* used in the Talmud:

A. As a means of clarifying the text. For example, the Talmud" (Kiddushin 2a) discusses the Mishnah's ruling that a woman can be betrothed through money. The basis for money being used as a means of acquisition in this case is derived through a *gezera shavah*. The Torah (Bereishis 23:13) states that when Avraham purchased the burial field from Efron, he said: *I have given the money for the field, take it* [קח] *from me.* In the verse concerning betrothal, the Torah (Devarim 22: 13) states: *when a man takes* [יקח] *a woman*. The use of the verb "take" in the latter case is compared to its use in the former case; i.e., just as money is effective as a means of taking a field, so too is it effective as a means of taking a wife.

B. As a means of establishing a halachah not mentioned in the text.

For example, the Talmud (Shavuot 47a) rules that the heirs of a *shomer sachar* - a paid watchman -are not obligated to swear that their father had not used the

item that he was being paid to guard -a vow that the father would have to make if the item had been accidentally destroyed while in his custodianship. Through use of a *gezerah shavah*, it is determined that this ruling applies to the heirs of a *shomer chinam* - an unpaid watchman as well, for the Torah (Shemos 22:7 and 22: 10) uses the phrase that he has not used his neighbor's property regarding both the paid and unpaid watchmen. Once the law freeing the heirs of the unpaid watchman has been derived from the Torah, it can be applied to the heirs of the unpaid watchman based on the use of the same phrase.

Gezerah shavah has a number of restrictions that govern its usage.

A. *Mufnah* -open; i.e., no deductions or inferences were made from the words being compared. The redundancy of the words is taken as an indication that they were utilized to point to the comparison drawn. For example, the Talmud (*Shabbos* 64a) draws a comparison between the laws of ritual impurity of a corpse to those of an insect, noting that the comparison is possible because the similar terminology is open.

B. *Ein Adam Dan Gezerah Shavah L'atzmo*-no one can draw a *gezerah shavah* comparison on his own; i.e., there must be a received tradition that a comparison had been drawn between the two laws. The Rambam (*Sefer Hamitzvos*, Shoresh I I) explains this restriction: "The principle of *gezerah shavah* is an instrument that could be used ad infinitum to refute all of the laws of the Torah."

If *gezerah shavah* had no restrictions on its use, anyone could freely associate between unrelated subjects and use the repetition of terminology as a means of supporting his contentions. The Talmud therefore rules that *gezerah shavah* can only be used as a means of establishing textual proof for, a known tradition and only if the sages had a tradition that a comparison was to be drawn based on the use of similar terminology in two different cases.

C. Both words or phrases used in the *gezerah shavah* must be from the Torah. Comparisons cannot be drawn based on the repetition of a term in *Nevi'im* or *Kesuvim*. For example, the Talmud (*Bava Kamma* 2b) questions the source of the Mishnah's ruling that an ox's goring with his horn is a major category of damage. Initially, the Talmud establishes that the source is a verse from *Nevi'im*, but then points out that the latter cannot serve as a source for the Torah.

D. *Bin Gezerah Shavah Lemachtzah*-a partial comparison cannot be drawn; if a law applicable to X is applied to Y through use of a *gezerah shavah*, then all of the laws applicable to X must be applied to Y. For example, the Talmud (*Zevachim* 48a) determines that the sages' decision not to require a guilt offering of a person whose use of consecrated property was doubtful was based on the fact that a *gezerah shavah* comparison had been drawn between the sin offering and the guilt offering in a different context. Thus, since the latter was not applicable in cases of doubt, the former would also not be applicable in cases of doubt.

There are two other methods of derivation often used in the Talmud that are not considered to be separate principles, but rather sub-categories of *gezerah shavah*, since their logical basis is similar.

A. *Hekesh*-juxtaposition of cases, i.e., where a number of cases are mentioned in either a single verse or in a group of verses. Through *hekesh* we can deduce that the law specified in one case applies to the juxtaposed cases as well. For example, the Torah (*Devarim* 22:26) states, in reference to a betrothed woman

who was raped: *nothing shall be done to the girl* [*i.e., she is not to be punished*], *for she is not liable for the death penalty* [*as would be the case had she-as a betrothed woman-consented to the act*], *for just as when a man rises up to kill his neighbor, so too is this case*. The Talmud (Sanhedrin 74a) uses the juxtaposition of rape and murder in the verse as the basis for the ruling that one is permitted to kill in self-defense.

The difference between *hekesh* and *gezerah shavah* is that the former is a comparison drawn by the Torah itself, whereas the latter is a comparison drawn by the sages. It is thus understandable why *hekesh* is a preferred means of derivation.

B. *Semuchim* -juxtaposition of subjects, i.e., a comparison drawn on the basis of the proximity of two subjects. *Semuchim* differs from *hekesh* in that the Torah does not draw a specific analogy, but seems to point to one. For example, the Torah (*Shemos* 22: 17) states: *You shall not allow a witch to live*. The next verse states: *Anyone who has intercourse with an animal shall be put to death*. The Talmud (*Berachos* 2 I b) deduces from the juxtaposition of the two subjects that just as bestiality is a capital crime, so too is witchcraft. R. Yehudah maintains, however, that *semuchim* can only be used as a means of deriving *halachah* if the verses are from *Devarim*.

17.1.3 *Binyan Av* A conclusion drawn from a biblical verse, also referred to as *mah matzinu* - what have we found. *Binyan Av* has two forms; *mikasuv echad*, a conclusion drawn from a single verse, and *mishnei kesuvim*, a conclusion drawn from two verses. For example, the Torah (*Devarim* 19:15) states: A *lone witness shall not testify against a man...according to two witnesses or three witnesses the matter shall be established*. The Talmud (*Sotah* 2a) notes that the use of the word *witness* already indicates that the testimony of a single witness is unacceptable; the word *lone* would thus seem to be superfluous. The Talmud concludes that the use of lone as a qualification for the singular *witness* in this verse comes to teach us that if the word witness is used elsewhere without the qualifying *lone*, the reference is to more than one witness even though the singular form is used.

Similarly, the Torah (*Devarim* 23:25-26) states: *If you [i.e., a laborer] come into your neighbor's vineyard, you may eat grapes until you are satisfied but you may not place them into your vessel [for later consumption]. If you [i.e., a laborer] come into your neighbor's standing grain, you may pick sheaves by hand but you may not use a scythe to cut your neighbor's standing grain [for your personal use]*. The Talmud (*Bava Metzia* 87b) poses the following question. What is the source of the Mishnah's ruling allowing a laborer to eat produce while working in his employer's field? The first verse cannot be seen as being the source, for one could say that a laborer is permitted to eat the fruits of the vine since in any event the owner is required to leave a portion of that produce for the poor. The second verse can also not be seen as being the source since in any event the owner is required to set aside a portion of that produce as *challah* - one of the twenty-four gifts given to a *kohen*. However. by comparing the common denominator of the two verses, the Talmud concludes that a laborer is permitted to eat everything that grows.

Binyan Av has one restriction; it is only applicable if both of the verses are required to establish the *halachah*. If the second verse simply repeats a law that was already known, no conclusions can be drawn. The following are the rules of derivations based on textual explanations:

17.1.4 *Klal Uprat* A general category followed by a specific example. Do we say that the specific example is given so as to limit the application of the general category, or do we say that the specific example is no more than an illustration of that application? For example, the Torah (*Vayikra* I :2) states: *If any of you shall offer a sacrifice to Hashem, you shall bring your sacrifice from animals, from the herd or from the flock you shall offer your sacrifices*. The *Toras Kohanim* (ad loc.) rules that since the word animals is a general category, whereas the words herd and flock are specific examples, all sacrifices must meet the criteria of the specific examples.

The Principle: When a general category is offered followed by a specific example, we rule that the latter serves as a qualification of the former.

17.1.5 *Prat Uklal* A specific example followed by a general category. Again, do we say that the specific example is given so as to limit the law of the general category, or do we say that the specific example is an illustration of the general category's practical application? For example, the Torah (*Devarim* 22: I and 3) states: *You shall not watch your brother's ox or sheep wandering and ignore them, you shall return them to your brother. You shall do so for his donkey, and you shall do so for his garment and you shall do so for all things which your brother has lost...*

Because the general category - *all things* - follows the specific examples, we rule that the obligation to return lost property applies to all losses and not only to those specified in the verse. The Talmud (*Bava Metzia* 27a) explains that the specific examples cited in the verse teach us various *halachos* regarding the identifying signs and are not superfluous. However, they are not to be understood as limiting the obligation to return lost property in any way.

The Principle: When a general category is preceded by a specific example, we rule that the latter does not serve as a qualification of the former.

17.1.6 *Klal Uprat Uklal* A general category followed by specific examples followed by a general category. Again, we are faced with the same dilemma; do we see the specific examples as limiting the scope of application of the general categories that precede and follow them? For example, the Torah (*Shemos* 22:6-8) states:

If a man gives his friend money or utensils to watch and they are stolen from the man's [i.e., the watchman's] home; if the thief is caught, he [the thief] shall pay double. And if the thief is not caught, then the householder [i.e., the watchman from whose house the items were taken] shall come to the court [and swear] that he has not used his neighbor's property. In any case of crime [i.e., in any situation where the watchman claims that the property is no longer in his possession] be it an ox, a donkey, sheep, a garment or any [property that was] lost [and about which the watchman claims that he was not negligent in guarding the property], and about which [testimony is brought] saying this is it [i.e., the property which the watchman claims is no longer in his possession], their claims shall be brought to the court, and he who the court finds culpable shall pay double to his friend. ..

In the last verse, the Torah - referring to a case where the owner of the property claims that the watchman was negligent or that he had himself stolen the property - requires the watchman to swear to the court to substantiate his claim. The verse begins with a general category-*in any case of crime* - followed by specific examples - *an ox, a donkey, sheep, a garment* - and concludes with a general category - *any [property that was] lost*. Based on the principles of R.

Yishmael, the Talmud (*Bava Kamma* 63a) rules that the law is not limited to the specific examples cited. However, the law is conditional in that it only applies to items that are similar to the specific examples cited. In this case, the Talmud (*Shavuos* 42b) rules that the law that requires the watchman to swear that he was not negligent applies only to items that are similar to an ox, a donkey, sheep, or garments; i.e., that are movable and that have intrinsic value.

The Principle: When specific examples are preceded and followed by general categories, we rule that the application of the law is limited to items that are similar to the specific examples.

17.1.7 *Klal Shehu Tzarich Laprat* A general category that is elucidated by a specific example. The converse of this principle also applies, i.e., a specific example followed by a general rule that serves to elucidate it.

This principle differs from *klal uprat* and *prat uklal* (17.1.4 and 17.1.5) in that here we are dealing with a situation where both the example and the general rule explain each other rather than limiting or expanding a given law. Whereas *klal uprat* and *prat uklal* each contain enough information to enable us to determine the *halachah* and can thus be seen to serve as limiting or expanding the halachic application, *klal shehu tzarich laprat* deals with a situation wherein the specific example and the general rule each provide necessary information for deriving the halachic application. It should be noted that the rules of derivation are used as a means of establishing a source for known halachic practice and are not used as a means of creating new *halachos*.

For example, the Torah (Shemos 13:2) states: *Sanctify all firstborn to Me, the issue of all wombs among the children of Israel, among man or beasts, they are Mine*. This *halachah* is repeated later (*Devarim* 15:19) where the Torah states: *Every firstborn that is born among your male herds and flocks shall be sanctified to Hashem*.

The Talmud (*Bechoros* 19a) offers the following explanation. Had we interpreted these verses according to the rule of *klal uprat*, we would see the latter verse's statement of *among your male herds* as qualifying the general rule and limiting its application to males alone. However, had we done so, we would rule that firstborn males would have to be sanctified even if they were preceded by a female. This would contradict the statement of the first verse that had limited the *halachah's* application to *the issue of all wombs*, which had specifically limited the application to a firstborn whose birth had not been preceded by another birth from that womb.

Moreover, if we limited the *halachah* to those cases that fit the criterion of *the issue of all wombs*, then a male born after a previous cesarean birth would also be included in the obligation since the latter could not be seen as being the issue of all wombs. However, the verse in *Devarim* would seem to limit the *halachah's* application to those who fit the criterion of all firstborn. A male born after a cesarean birth would not meet that criterion.

We are thus faced with a situation where the *klal* does not expand the *prat*, nor does the *prat* limit the *klal*. Taken individually, we cannot determine the source for the known *halachah* that the obligation to sanctify the firstborn applies to a firstborn male whose birth was not preceded by another birth -neither of a female nor of a cesarean section. Only when we combine them are we provided with all the information necessary to reach the conclusion.

The Principle: When the *klal* and *prat* serve to explain each other, we combine them so as to derive the *halachah*.

17.1.8 *Kol Davar Shehayah Baklal Veyatza Min Haklal Lelamed* An example whose specific applications were already included within the general category. In this case, we are referring to a case wherein the specific example cited by the Torah does not limit the application of the general category, for whatever information that we are provided with by the specific example was already known. Thus, the example cannot be seen as limiting the application of the general category. Rather, we must see the Torah's citation of what would be an otherwise superfluous example as coming to teach us something completely new that will further elucidate the application of the general category.

For example, the verse (*Shemos* 20: 10) states: *and the seventh day shall be Shabbos for you, you shall not perform any type of work*. Later, the Torah (Shemos 35: 3) states: *You may not light fires in all your encampments on the Shabbos day*. The latter verse is a specific example of a forbidden type of work. Yet, the lighting of a fire had already been included in the prohibition of the former verse. It cannot be seen as a *prat* following a *klal*, thereby limiting the forbidden type of work mentioned in the first verse, for to do so it would have had to be mentioned within the context of the first verse. Its citation would thus seem to be superfluous unless it had been said to teach us something entirely new.

The Talmud (*Shabbos* 70a) explains that the specific example cited teaches us that each type of work forbidden on *Shabbos* is prohibited individually. Thus, if I perform a single action that is made up of two or more forbidden types of work, I am held culpable for each one, even though I only performed one action. For example, if I light a fire under a pot, I am culpable for both lighting a fire on *Shabbos* and for cooking on *Shabbos*.

The Principle: When a specific example already included within a general category is cited, the specific example comes to teach us something that applies to the entire general category.

17.1.9 *Kol Davar Shehayah Baklal Veyatza Lit'on To'an Echad Shehu K'inyono, Yatza Lehakel Ve-lo Lehachmir* If a specific example was already included within a general category, and it is then cited in a context similar to the general category.

For example, the Torah (*Shemos* 2 I: 12) states: *One who strikes a man causing him to die shall surely be put to death*. No differentiation is made between intentional and unintentional killing. Later, the Torah (*Devarim* 19:5) states: *and if one came across his neighbor as he cut wood in the forest, and he swung the ax to cut the tree and the head [of the ax] was detached from the handle and fell on his neighbor killing him, he shall flee to one of the cities [of refuge] and remain alive.*

The *Sifri* (ad loc.) explains that the second verse teaches us that unintentional killing is not a capital crime. This rule is then applied to the general category cited in the first verse and qualifies it, limiting the punishment for killing to cases where it was committed intentionally.

The principle differs from *klal uprat* in that the specific example only teaches us something about the general category through inference. Had the second verse specifically stated that only one who kills intentionally is to be killed, we might well have seen its citation as being a *klal uprat*. However, by telling us that a

person who kills unintentionally remains alive, we can infer that the punishment cited in the first verse only applies to one who kills intentionally. Thus, it is not really a limitation of the general category cited earlier but a clarification. As such, we rule that the purpose of its being brought in this manner is to teach us to be lenient rather than stringent.

The Principle: When a specific example clarifies details of a general category, we rule leniently and not stringently.

17.1.10 *Kol Davar Shehayah Baklal Veyatza Lit'on To'an Acher Shehu Lo K'inyono, Yatza Lehakel Ulehachmir* If a specific example was already included within a general category, and is then cited in a context that is not similar to the general category.

For example, the Torah (*Vayikra* 13:1-3), in discussing the laws of *tzara'as*, rules that a person suffering from the affliction is declared to be ritually impure if a *kohen* discovers a white hair on the afflicted flesh. Later, in discussing *tzara'as* found on the head under the hair or beard, the Torah (*Vayikra* 13:30) seems to limit the application to a case where the hair found was yellow. Thus, though the specific example would seem to limit ritual impurity to cases where a yellow hair was found-as would be true were we to employ the rule of *klal uprat* - we cannot do so since this specific example concerns *tzara'as* found under the hair or beard and is thus different than the *tzara'as* found on the flesh that was spoken about earlier. The *Sifra* explains that we therefore take its citation by the Torah as having both lenient and stringent ramifications. Hence, a white hair does not impart ritual impurity if found under the hair or beard, and a yellow hair does not impart ritual impurity if found on the flesh. The yellow hair cited in the specific example thus has stringent applications vis-à-vis *tzara'as* under the hair and lenient applications vis-a-vis *tzara'as* found on the flesh.

The Principle: A specific example that is cited in a context that is not similar to the general category has both lenient and stringent applications.

17.1.11 *Kol Davar Shehayah Baklal Veyatza Lidon B'davar Chadash, I Atah Yachol Lehachaziroh Laklal, Ad Sheyachazirenu Hakasuv Leklalo B'ferush* If a specific example was already included within a general category, and is then cited specifically to teach us something that was not included within the general category.

This principle differs from the previously cited one. The previous principle deals with a situation wherein the information included in the specific example contradicted the information available in the general category. This principle deals with a situation wherein the specific information in the example comes to inform us of an entirely new *halachah*.

For example, the Torah (*Vayikra* 14:13) states*: and he shall slaughter the lamb [offered by the person afflicted with tzara'as] in the same place as the sin-offering and burnt-offering are slaughtered in the Sanctuary, for the sin-offering is like the guilt offering, both are the kohen's. ...*The next verse states: *and the kohen shall take the blood of the guilt-offering [brought by the person afflicted with tzara'as] and the kohen shall place it on the lobe of the right ear of the person being purified, and on the thumb of his right hand and on the big toe of his right foot.*

The *Toras Kohanim* (ad loc.) explains that the guilt-offering of *tzara'as* had been a part of the general category of sin-offerings as evidenced by the first phrase of the first verse. The Torah had separated it from the general category by teaching

us a specific law applicable only to it, i.e., that the *kohen* was required to take the blood of the offering and place it on the person's ear, big finger, and big toe. Had the Torah not specifically returned the guilt-offering to the general category - in the last phrase of the first verse-we would rule that the laws applicable to the general category would no longer be applicable to it.

The Principle: If a specific example was removed from the general category, the laws applicable to the general category cannot be applied to it unless the verse specifically returns it to the general category.

17.1.12 *Davar Halamed Meinyano Vedavar Halamed Misofo* Inferences deduced from the context and inferences deduced from subsequent text.

For example, the Torah (*Shemos* 20:13) states: *You shall not steal*. The text does not specify whether this prohibition applies only to the theft of objects or includes kidnapping as well. The Talmud (Sanhedrin 86a) determines that the inclusion of stealing within the context of *You shall not murder* and *You shall not commit adultery* - both of which are capital crimes - can allow us to infer that the prohibition also pertains to kidnapping, which is specified elsewhere to be a capital crime.

Similarly, the Torah (*Vayikra* 14:34) states: *I have put the affliction of tzara'as on a house in the land you possess*. The verse does not specify what constitutes a house. A subsequent verse (*Vayikra* 14:45) states: *and the kohen shall tear down the house, the stones, the timbers and all of the mortar*. The *Sifra* rules that the latter verse teaches us that the house considered to be afflicted by *tzara'as* is one that was constructed from stones, timber, and mortar.

The Principle: A category can be clarified by its context or by subsequent detail.

17.1.13 *Shnei Kesuvim Hamakchishim Zeh Es Zeh, Ad Sheyavo Ha- kasuv Hashlishi Veyachria Beineihem* Two verses that seem to contradict each other. This principle applies to a situation wherein two verses that deal with the same subject seem to infer contradictory applications. There is no difference whether the two verses appear within the same chapter or in separate chapters. No inference is made until a third verse sheds light on the apparent contradiction.

For example, one verse (*Bereishis* I: I) states: *In the beginning Hashem created the heaven and the earth*. Later, the Torah states (*Bereishis* 2:4): *on the day that Hashem created earth and heaven*. The inference from the first verse is that heaven was created first, whereas the inference from the second verse is that the earth was created first. We must therefore turn to a third verse that clarifies the point; i.e., the verse (*Yeshayah* 48: 13) that states: *My hand has laid the foundations of the earth and My right hand has spanned out the heaven, I call to them and they come forward together*. Rashi (ad loc.) explains that the creation of the world can be compared to a craftsman who works with both hands simultaneously. Thus, God created the heaven and the earth at the same time and there is therefore no contradiction.

The Principle: When two verses seem to contradict each other, we make no inferences until a third verse resolves the contradiction.

17.2 The Principles of R.Akiva

As we have already noted, R.Akiva did not accept R.Yishmael's basic contention that the Torah used the language of man, i.e., that phrases or words in the Torah might have been used for stylistic rather than deductive purposes. His basic

premise in deriving *halachah* from the text was that the language of the text cannot be seen as form; rather every sentence, word, letter, and even crown had been chosen to infer a specific teaching. Thus, many of R. Yishmael's principles of derivation would be inapplicable according to R. Akiva, for instead of seeing the sources as being superfluous phrases used to either expand or limit the law, he would search for the new law to be derived from their very mention.

R.Akiva, in his textual derivations, employed the following two basic principles:

17.2.1 *Ribui Umiut* Extension and limitation. Although somewhat similar to R. Yishmael's principle of *klal uprat, ribui umiut* differs in that it places the emphasis on the language employed rather than on the subject matter. According to this principle, words such as אף-even, גם-also, כל-all, and את-a participle used as an introduction for a direct object, extend the *halachah* derived from a specific text. On the other hand, words such as אך-however, רק-only, and מן-from, serve to limit the application of a halachah derived from a text.

17.2.2 *Yesh Em LAmikra* The manner in which words are pronounced is used to establish *halachah*. Whereas R. Yishmael's principles are based on the manner in which the words of the Torah are transcribed, R. Akiva saw the traditional pronunciation as being the determining factor. It should be noted that there are instances in the Torah of קרי וכתיב-where a word is written one way and pronounced another way. This can have halachic ramifications.

For example, the Talmud (*Sanhedrin* 4a) notes that the Torah (*Vayikra* 12: 5) states: *And if she shall bear a girl, she shall be ritually impure* שבעים. Were we to base the *halachah* on the way the word is written, we would render the woman ritually impure for seventy days, for that would be the translation of שבעים. However, according to the way the word is traditionally pronounced, with a *shuruk* under the ב and a *patach* under the ע, the translation is two weeks.

R. Akiva and his students had an enormous influence on the development of *halachah*, for most of the sages of the Talmud followed his methodology. The Talmud (*Sanhedrin* 86a) notes: The author of an anonymous mishnah is R. Meir, an anonymous *tosefta* is R. Nechemyah, an anonymous *sifra* is R. Yehudah, an anonymous *sifri* is R. Shimon -and they all taught according to R. Akiva.

17.3 Additional Methods of Derivation
Aside from the specific principles formulated by R. Yishmael and R. Akiva, we find many other examples of the Talmud using textual analysis as a means of deriving *halachah*. It is beyond the scope of this work to attempt to analyze every form of textual analysis; the following are offered as examples.

17.3.1 Literal versus Nonliteral Interpretation For example, the Mishnah (*Berachos* 1:3) records a dispute between the schools of Shammai and Hillel regarding the obligation to recite the *Shema*. The verse (*Devarim* 6:7) states: *and you shall speak of them when you stay in your house and when you travel on the road and when you lay down and when you arise*. The school of Shammai interpreted the verse literally and ruled that at night the *Shema* must be recited while laying down and in the morning it must be recited while standing. The school of Hillel maintained that the latter phrases are to be understood as teaching us that the obligation is to recite the *Shema* at the time when people are laying down and at the time when people arise.

17.3.2 Midrash Hahigayon Derivations based on logical analysis of the text. This differs from the use of *sevara*-logic, which is the topic of the next section, in that it is based on an examination of the text rather than on intuitive deduction.

For example, the Torah (Devarim 24:6) states: *you shall not take the lower or upper millstone as a security, for it is his [the debtor's] livelihood*. The Mishnah (*Bava Metzia* 9:13) interpreted this to mean that one may not take any item as surety if it is used to prepare food, for the Torah had stressed that the lender - by taking the millstone as security -would be depriving the debtor from earning a means of livelihood. Thus, it is logical - based on the text's explanation - to expand the *halachah* that the Torah stated to similar articles given as surety for a loan.

Midrash hahigayon is also used to limit the application of a *halachah*. For example, the Torah (*Devarim* 23:4-5) states*: an Amoni and Moavi shall not enter the assembly of Hashem. ..for they did not come forward to you with bread and water when you were on your way out of Egypt*. The Talmud (*Yevamos* 77a) derives that the prohibition of marrying either an Amoni or a Moavi applies only to males. Since the Torah had explained the reason for the prohibition -*because they did not come forward with bread and water*- we can logically conclude that the prohibition applies only to those who would normally provide bread and water; i.e., men and not women.

The sages also used logical interpretation when the text suggested it be employed. For example, the Torah (*Shemos* 12:6) states: *and the entire congregation of Israel shall slaughter it* [i.e*., the Paschal sacrifice*]. The Talmud (*Kiddushin* 41 b) asks: Is it possible for the entire congregation to slaughter the Paschal sacrifice? Surely one person slaughtered it on behalf of the others. Rather, we can logically deduce that the Torah used the phrase and the entire congregation to teach us that an action performed by an agent is considered to have been performed by the one who appointed him. Since the slaughterer acted as an agent on behalf of the congregation, it is considered as if the entire congregation had slaughtered the Paschal sacrifice. Logically, then, any action performed by an agent be considered to have been performed by the person who appointed the agent.