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**Le-toldot ha-ḳaṭegoryah shel isure "‘ovadin de-ḥol"  
be-Shabat ve-yo[m] ṭ[ov] ve-yiḥusah la-ḳaṭegoryah shel  
isure ha-"shevut"**

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Shevut Prohibitions and their relationship to the category of "Ovadin  
De'chol" Prohibitions

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## **Shevut Prohibitions and their relationship to the category of "Ovadin De'chol" Prohibitions**

I.A. Nomenclature and applicability of Prohibitions: An investigation into the term "Shevut" in the halachic midrashim indicates: That in the Midrashim from the school of Rabbi Yishmael the term "Shevut" is used for Prohibitions that are not Melacha, however, in the Midrashim from the school of Rabbi Akiva it seems that the term "שבתון שבות" does not refer to the "Shevut" Prohibitions but refers to acts that are actually Melachot. The term used for acts known as "Shevut" is termed "מלאכה שאין חייבין עליה כרת". In contrast to this we do not find the term "שבתון שבות" in the Midrashim of the school of Rabbi Yishmael.

In all these drashot including those of the school of Rabbi Yishmael, which deal directly, with the "Shevut" Prohibitions, it seems, in disagreement with H. Albeck's opinion, that we are dealing with pure Biblical Prohibitions, but one is not required to bring a sin offering when transgressing them. This does not agree with the later Babylonian opinion, which is based on Rabbi Shimon's opinion in the Mishna, that the "Shevut" Prohibitions include Rabbinic Prohibitions. In the Jerusalem Talmud can be found vestiges of the opinion that the "Shevut" Prohibitions are true Biblical Prohibitions.

B. The "Shevut" Prohibitions listed in the halachic midrashim include: strenuous physical acts, acts which change the status of possessions, acts of court and acts related to commerce. The Mishna shows a new set of "Shevut" Prohibitions (according to the rabbis who disagree with Rabbi Eliezer): Melachot that are performed not in the usual manner. And in the Tosefta we can find as a "Shevut" even acts that were done "פחות מכשיעור". The distinction between Prohibitions which are forbidden on the Sabbath because of Melacha and the prohibitions which are forbidden by the Torah

but do not require a sin offering, is a very ancient one that was practiced during the time of the Second Temple (but in the course of time the list of "Shevut" Prohibitions grew), one can even find four of these ancient Prohibitions in the Mishna.

C. Special "Shevut" Prohibitions that are only mentioned in the Amoraic literature:

1. Based on the Midrash "Sifra" - Washing or removing moldy parts of vegetables is permitted on Yom Kippur. Other sources seem to indicate that this is forbidden on Yom Kippur that falls on the Sabbath, however we have come across sources in the Bavli and the Yerushalmi that differ on this. The point being: The teaching that limits the washing of vegetables on Yom Kippur that falls on the Sabbath is derived from the idiom "שבתון שבות", and as a result in the later halachic literature (seemingly at first in the "Magid Mishne") it was looked upon as a "Shevut" Prohibition. However, we find that already in the Bavli itself there are those that hold that this idiom is only a clarification to let us know that this is a Melacha.

2. Baking the Shew Bread - Was tied to the "Shevut" Prohibitions because of the element of preparation on the Sabbath for the weekday.

3. Instructing Gentile: We may assume that in earlier times that the work of a Gentile himself on the Sabbath was prohibited. At a later time it was explained that the Prohibition is a Jew telling a Gentile to do work for him. From the fourth Amoraic generation on, in Babylon we find this Prohibition categorized as a "Shevut" Prohibition. In this period it is clear the "Shevut" Prohibitions are rabbinic Prohibitions.

4. A generalization that permits certain "Shevut" Prohibitions just before sundown on Sabbath Eve ("בין השמשות") - according to Rabbi. This wording is only present in

the Talmud and not in Rabbi's teaching. This generalization agrees with the opinion of R. Shimon Ben Elazar in the Tosefta. He still calls the "Shevut" Prohibitions by their earlier name "An act, which, when done intentionally is not punished by 'kareth' and when done unintentionally does not oblige a sin offering".

5. Blowing the shofar on the Sabbath - According to Rav Yosef in the Bavli this is a rabbinic "Shevut" Prohibition. A more thorough investigation, both in the Tannaitic and the Amoraic literature shows that there were those who held that this is a Torah Prohibition. On the other hand, it would seem that some held that there was no prohibition of blowing the shofar during the Sabbath or Yom-tov. Except for Rav Yosef we find no explicit sources which hold that we are dealing with a rabbinic Prohibition. Among the Rishonim and Acharonim in the post-Talmudic period it is evident that there is a doubt as to whether blowing the shofar on the Sabbath is intrinsically prohibited or whether it is prohibited because of the possibility of transgressing another Prohibition. A new resolution of the doubt is suggested by the Acharonim terming it a Rabbinic Melacha.

6. Rolling out of bread dough - In this case, we also find sources who it would seem, differ. There are those who permitted it without reservation on the Sabbath and Yom-tov. There were those who struggled with how to permit pasting the dough in the oven to roll it out, so as to avoid a Prohibition punishable by stoning. There were those that permitted this with a "Shinui". Amongst the Rishonim we find a difference of opinion between the Ramban who held that rolling out dough is a "Shevut" Prohibition and the Ran who held that this is not included in the "Shevut" Prohibitions, but belongs to the category of "Ovadin De'chol". A group of acts that by definition - are permitted on the Sabbath and Yom-tov, but require that when performed they should be done with a "Shinui". Here in the Ran we find for the first

time a clear and precise distinction between "Shevut" Prohibitions and acts categorized as "Ovadin De'chol". From this point on the Ran's distinction between the two types of Prohibition was accepted as halacha by those that came after him. The Ran's approach became paramount, it would seem, because Rabbi Yosef Karo quotes it in the Shulchan Aruch, and so discards the Ramban's halachic approach on this issue. The Ran's source in this is Rashi's commentary on the Talmud on the subject of rolling out dough, although in Rashi's commentary this distinction between "Shevut" and "Ovadin De'chol" is not sufficiently developed.

2.A. Rest from labor on the Sabbath and Yom-tov. - The idea that the Sabbath and Yom-tov is a day of rest from toil and fatigue of the weekday is found in the Aggadic sources. However, we found it necessary to investigate if this concept has halachic ramifications. Was hardship prohibited on the Sabbath and Yom-tov? If so, how is hardship that is forbidden defined?

An example of this question would seem to indicate that this consideration has no place in Halacha. The Shulchan Aruch Orach Chaim (319,4) forbids the removal of non-edibles from food even though the gathering of the food in certain instances involves much hardship and is time consuming. In contrast, there could be less hardship and time investment in gathering the non-edibles from food. Rashi and Tosafot explain that the reason it is permitted to remove food from non-edibles that this is different from the way it is done on weekdays. This leads us to a situation where at times in order to avoid performing one of the Melachoth a person is required to perform the Melacha with much toil so as to do it differently from the way it is done on weekdays and this makes the act permissible. This demonstrates that the guiding principle of forbidding Melachoth is not at all tied to physical toil and hardship. (This is not the Ramban's approach in his explanation of the subject and we have noted this in the body of our paper). This is shown in the Mishna where a Melacha that is

destructive and not constructive does not require a sin offering if done, even if it involves great hardship and toil. This leads to the conclusion, that a creative act is what is forbidden on the Sabbath, a creative act by a person in his environment, a constructive act done on the Sabbath requires a sin offering for forgiveness, even if it does not involve toil or hardship. In contrast, a destructive act even if it requires toil and hardship and lasts the entire Sabbath - does not require a sin offering. Rabbi Yehuda Halevi, Rabby Haim Ben Attar and Rabbi D. Nieto define the laws of the Jewish Sabbath in this manner. From the above the conclusion is very clear: The Torah does not prohibit hardship and toil of itself. This conclusion is supported by Rav Saadia Gaon and others who understood the Torah commandment to desist (the root "שבת") is not a command to rest but a cessation of creation. We have also found another thought that explains the distinction between a forbidden "Melacha" that is tied to constructive creation and "Avoda" which is hardship and toil which was not forbidden on the Sabbath by the Torah. It would seem that this halacha should be tied to the identification of the 39 Melachoth of the Tabernacle (although this is not accepted by all the commentators). The Rambam does not hold a definite position that sees a Torah Prohibition on hardship and toil on the Sabbath per se. Only with the Ramban in his commentary on Leviticus 23, 24 do we clearly find for the first time the argument that there is a Torah Prohibition on the violation of the commandment to rest without any connection to the melachoth and their derivatives. The Ramban repeats the earliest sources in the Halachic Midrashim in the Mechilata of Rabbi Yishmael and Rabbi Shimon ben Yochai and draws the definite conclusion that the "Shevut" Prohibitions are Torah Prohibitions and derive from the violation of the positive commandment in the Torah to rest "Shabaton". The other sources that hold that the 'Shevut' Prohibitions are rabbinic in origin he explains that there are two levels of "Shevut" Prohibitions: The violation of the Torah commandment is expressed

by the intensive performance of work involving much hardship and toil, however a one-time act of the nature of the acts described above was forbidden by the sages as a protective "fence" to the commandment "Shabaton". What is significantly new in the Ramban's approach is his unification of all the expressions with which we are familiar. His approach is that the expressions "Shevut", "Ovadin De'chol", and "Mimtzo cheftzecha ve'dabber davar" Prohibitions all belong to the same halachic category, and that there is no difference between them. He seems to regard "Ovadin De'chol" and Prohibitions of "Mimtzo cheftzecha" as rabbinic "Shevut". This conclusion was also reached by our research into his commentary of the Bavli subject matter as indicated in the body of this thesis. A further conclusion that was reached while researching these sources: The Ramban tends to blur greatly the differences between the acts that were forbidden by the rabbis because they were "secular" or involved hardship and toil. He also makes no distinction between acts that are forbidden because of "כדשע"ב" which forbids an act that is performed in a secular manner, in accordance with the methodology of Rashi's school that categorizes these activities as "Ovadin De'chol". On the other hand he is not precluded from categorizing them as one of the "הגזרות שמא". This is not the approach used by colleagues and disciples in Spain: R. Yona, Haraah, Rashba, Ritva and later the Ran.

B. An investigation of the Mishnaic and Talmudic sources regarding Prohibitions tied to hardship and toil on the Sabbath and Yom-tov discloses that:

1. In the Mishna and Tosefta hardship and toil is never given as a reason for the Prohibition of an act.

2. In the Bavli, Tractate Shabbat, Rabbi Yehuda explains (as interpreted by Rava) that the reason for prohibiting a person from opening a bundle of hay or spreading a bundle of stems for cattle is that we do not toil to feed an animal on the Sabbath.



Although, this is not accepted by all, Rav Huna (as interpreted by Rav Hisda) disagrees with him, in addition Rabbi Yehuda refers not to a general Prohibition against toil but to a special restriction in regard to food.

3. In the case of Yom-tov we find no such Prohibition, only the Prohibition of toil in preparing something on Yom-tov for the weekday.

4. In the Yerushalmi we find that certain acts were prohibited on the Intermediate Days of the festival because of toil.

C. 1. Nevertheless, Rashi and his followers explain many of the Sabbath and Yom-tov Prohibitions found in the Talmud as forbidden because of the hardship and toil involved (in one instance it would seem that Rashi is of the opinion that toil and hardship are Torah Prohibitions, however it is more likely that the Torah source is a reference only).

2. It is in the Tosafot that we find the first systematic explanation of the place of toil Prohibition on the Sabbath and Yom-tov and the fundamental difference between it and "Ovadin De'chol":

a. It is their position that "Ovadin De'chol" Prohibitions apply to acts done publicly, and are designed to restrain acts that might look like weekday activities.

b. "Ovadin De'chol" Prohibitions relate essentially only to Yom-tov as it is not in principle permitted on the Sabbath to carry objects in the public domain, as a result this Prohibition will not generally occur on the Sabbath.

c. Only on the Sabbath are we concerned with great hardship, on Yom-tov this does not concern us.



3. This approach of Tosafot raises a question regarding the "Ovadin De'chol" Prohibitions that were discussed, such as the weighing Prohibition etc., (or toil or hardship Prohibitions according to the Ramban as above) are they only prohibited in public and permitted when done in private? Another possibility might be that Tosafot makes a distinction between two types of "Ovadin De'chol" Prohibitions. Those that were prohibited in public only for the fear that they would seem to be secular acts ("מחזי משום עובדין דחול" =), and those that were prohibited in all situations and places ("עובדין דחול" =). As the Ramban's approach is that "Ovadin De'chol" Prohibitions are hardship and toil Prohibitions that apply to both Sabbath and Yom-tov equally in public and private, and as expected we find that the Ramban's approach (as transmitted by his son in his commentary on the Tractate Bezah) supports the second possibility.

#### D. "Mimtzo cheftzecha ve'dabber davar" Prohibitions

1. Prohibitions and rulings regarding dress styles, walking, business and conversation were derived from Isaiah 58, 13 by the Bavli. These Prohibitions were later more clearly defined by the Amoraim, but in the Talmud there is no suggestion of a connection between these Prohibitions and the category of "Ovadin De'chol" Prohibitions.

2. In the course of time the differences between these two categories became blurred by many of the commentators. We find this in the commentaries of Rabbi Perachya, the Rashba, and others including the later commentators. The Rambam allocates a special place for these Prohibitions in chapter 24 of the laws of the Sabbath, distinct, it would seem, from the other "Shevut" Prohibitions. However, after discussing the matter and weighing different proposals of supporting evidence, we have come to the conclusion that in his opinion this group of Prohibitions is included in the "Shevut"

Prohibitions for Sabbath and Yom-tov. It must be stressed however, the Rambam's opinion is that these Secular Prohibitions are not the same as the group of Prohibitions that is termed by commentators such as Rashi and the Ran "Ovadin De'chol" Prohibitions, and are not tied to Prohibitions there were forbidden by the phrase "כדשע"ב".

E. Summary of the opinions of the Rishonim in our discussion

1. The Rambam does not recognize the "Ovadin De'chol" category of Prohibitions. He is of the opinion that there is only one category of "Shevut" Prohibitions, this category includes Prohibitions that were instituted by the rabbis based on the 39 Melachot and their derivatives. There is a group of acts, among the acts that were prohibited, which are prohibited only if they are performed in a weekday manner and were permitted if they are performed with a "change". He also feels that there is an additional group of Prohibitions (that were not prohibited by the Torah and are included in the "Shevut" Prohibitions), and are termed "Mimtzo cheftzecha" Prohibitions. This category, in his opinion, includes different "secular" Prohibitions, such as speaking about weekday business etc., however- and this is of paramount importance for us - those Prohibitions that were formulated in the Tannaitic and Amoraic sources with the phrase "כדשע"ב" are not included in this category. These were included in the ordinary "Shevut" Prohibitions based on the "גזרות שמא".

According to the Ran (whose approach is presented because of its clarity, although he was preceded in this by Rashi and Tosafot). The category of "Shevut" Prohibitions are rabbinic. The category of "Ovadin De'chol" is separate and less stringent, to be more precise, it would seem to be a category of permissible acts that require the performer to do them with a "Shinui".

The Ramban (who preceded him, but not Rashi and Tosafot, on whom the Ran developed his method) recognizes the existence of a category of Sabbath and Yom-tov Prohibitions called "Ovadin de'chol", however according to his thinking it is identical to the category of "Shevut" Prohibitions. The "Secular" Prohibitions derived from "Mimtzo cheftzecha ve'dabber davar" also belong to this general category. If we indicated earlier that according to the Rambam that all the phrases of "כדשע"ב are part of the other "Shevut" Prohibitions, we are led to say that according to the Ramban we must conclude the opposite, all the other "Shevut" Prohibitions (including those derived from the Melachoth) are somehow tied to "Secular" acts and were therefore prohibited. It would also seem, according to the Ramban, that the Melachot themselves were forbidden for this reason. The concept of "Taama d'qra" has exegetical consequences which we point out in the body of the dissertation.

3.a. The Ran's approach was accepted by the Shulchan Aruch, and the Ramban's approach was pushed aside and was forgotten in the world of halacha until the days of the Hatam Sofer, who revived it in recent times. The Hatam Sofer made use of the Ramban's method during the latter part of his life while living in Pressburg as a strong argument against various exemptions, or breaches in the area of Sabbath laws, which were made by reform groups in his time. The Hatam Sofer insisted on the validity of the Prohibition of doing business and riding in a railroad on the Sabbath. It was his opinion that these acts were a Torah violation of "Ovadin De'chol", or in other words a violation of the "Shabaton" rule, which he based on the Ramban. These rulings were in reaction to attempts by the early reformers to ease the Sabbath Prohibitions. At the same time, in responsa to private members in his community, his opinion is that the "Shevut" Prohibitions are not stringent Torah Prohibitions as he presented them in his battles with the breaches in the Sabbath laws. However his rulings were made halacha for later generations who made strict interpretation of the laws without any reference

to his battles with reform groups, so that according to his interpretation one must be concerned with Torah Prohibitions (at least as one consideration of many in a restrictive invoking of the Sabbath laws mentioned) when applying them to the use of modern technologies on the Sabbath. The same applying to flying in an airplane, automobile, riding a bicycle etc..

b. The reliance on the Ramban-"Hatam Sofer" ruling to say that the use of modern transportation means is a transgression of "Shabbaton" Prohibitions is primarily by Ashkenazic halachic authorities, the Oriental halachic authorities, as indicated in our dissertation - even though they were aware of the Hatam Sofer's ruling, generally disregarded it, and as a matter of fact permitted the use of transportation vehicles on Sabbath and Yom-tov with certain restrictions, usually those of traversing the "Techum Shabbat". The category of "Ovadin de'chol" is explained by them as referring to lightly restrictive Prohibitions according to the Ran's approach, and not Prohibitions of a Torah nature ("Shevut") as taught by the Ramban.

## APPENDICES

A. According to S. Lieberman the Tosefta (Bezah 4, 4) alludes to several other groups of Prohibitions: completed work, partial work, "Shevut" that is similar to a Melacha (a category taken from the Rambam's work Halachoth of Sabbath chapter 21!) and a fourth category of Prohibitions, named 'Ovadin De'chol". We also reviewed the other commentaries on this unclear Tosefta, pointing out the difficulties with Lieberman's interpretation, and supported Duenner's approach which seemed more acceptable. We remarked that even according to Lieberman's explanation we are not compelled to accept the fact that this fourth category is "Ovadin de'chol".

B. We compared the baraitoth in the Tosefta to Tractate Shabbath, 16, (17) 9, Yerushalmi, 7, 2, (10,a) and the Bavli 143, b, and 74, a.

The comparison leads us to the assumption that what we have is one baraita in several versions. We suggested separating the principal text of the baraita, which is common to all the versions, from the additions peculiar to each version. In the Yerushalmi we have an explanatory addition which indicates that only selecting all the heap of the same type requires a sin offering. In the Bavli - we think - the original baraita was divided into two. The first part which deals with fruits that are scattered in a yard is explained as belonging to the category of "Ovadin de'chol" Prohibitions, the reason given for this is "he should not do things as they are done on weekdays". The second part of the baraita, "choosing and eating etc." remains dealing with the "Melacha" of choosing. The remnants of the first part of the baraita point to its original source, such as the expression, "gathers and eats", which proves the immediateness of the eating in regard to "choosing". This bothered the Tosafot who removed the word "eating" from the baraita.

C. The terms "Ovadin de'chol", "Avsha milta", "Ziluta", are used interchangeably by many commentators. We showed that the source of this is already present in Rashi's commentary on the Talmud. In regard to the term "Tircha" there are those that differentiate it from the terms mentioned above, and there are those that do not. The question therefore is - if we want a precise definition - do we define "Tircha" as part of "Ovadin de'chol" Prohibitions or not?

D. The Prohibition of taking measurements on the Sabbath and Yom-tov are generally related to the "Ovadin de'chol" Prohibitions. This appendix traces the source of this opinion. Some Tannaitic sources definitely indicate that it is prohibited to take measurements on the Sabbath and Yom-tov. Other sources - such as the Mishna in

Sabbath 24, 5 - teaches us that it is not at all prohibited. The Bavli tells us that the measurement that is permitted by the Mishna is for a "Mitzva" only. We compared this commentary tradition with the commentary traditions we find in the Yerushalmi. We concluded:

There were Amoraim in Israel who were not aware of the tradition that restricted this permission to the performing of a "Mitzva". As there was a tradition even in Israel to be more stringent in the observance of Sabbath laws which were permitted in the Mishna (such as sealing the window) it is understandable why we find that these Amoraim (E.g. Rabbi Yizchak Nafcha) taught that this Mishna is not part of Halacha. Another approach to understanding this Mishna is to explain that it allows this act to be performed only when a "Mitzva" is involved. Later on the Rishonim who commented on these Tannaitic sources tried to resolve this in a harmonious manner. In this connection the Tosafot raised the question: According to Rabbi Yizchak Nafcha, who is not comfortable with the ruling in the Mishna in the tractate Shabbath that it is permissible to seal a window, why did he have to argue that this ruling was not halachic, he could have said that the Mishna restricted this act only when it was performed for the purpose of a "Mitzva" (similar to measuring), and sealing a window in general is prohibited. Their answer is that measuring is an act that belongs to the category of "Ovadin de'chol" which is less stringent, while sealing a window belongs to the category of the "גזרות שמא" which are rabbinic Prohibitions that are more stringent. It would seem that this is the source of the opinion that became accepted in the halachot of Sabbath that measuring belongs to the category of "Ovadin de'chol" which is permitted when performed with a Shinnuy.

E. With reference to the above discussion in regard to the term "Ovadin de'chol": In the Talmud it is mentioned explicitly only once by an Amora in this context in Bavli (Beza 28, a). The problem is that we are not certain that the term related to Abbaye is



his originally, as the term appears in his rejection of Rav Yosef who saw the identity between Rabbi Yehoshua who permits weighing by the use of equal parts of the same item on Yom-tov and the Mishna in "Bechorot" that permits weighing by the use of equal parts of the same item when applied to consecrated objects that have been invalidated, and against this Abbaye argues, as is quoted there, "Perhaps it is not so, Rabbi Yehoshua only permits this on Yom-tov where there is no disrespect to consecrated objects, but where the act involves disrespect to consecrated objects he would not permit it, (he would not agree with the Mishna in "Bechorot").

"אי נמי, עד כאן לא קאמרי רבנן התם אלא משום דלא מחזי כעובדין דחול,

אבל הכא דמחזי כעובדין דחול לא".

According to this approach the sages according to Rabbi Yehoshua, only in such circumstances do they permit using equal parts for weighing as it does not look like "Ovadin de'chol" (because we are discussing an act of selling and it is not customary to weigh in this manner when selling - Rashi), but here on Yom-tov it looks like "Ovadin de'chol" (we are talking about dividing something and this is done in a secular manner - Rashi), and it would be prohibited. Therefore it is conceivable that the sages who prohibit the use of equal parts when weighing on Yom-tov will agree with the Mishna in "Bechorot" to permit using this weighing method in the case of the first-born. It is possible then, to question if this term is part of Abbaye's original argument, and to propose that Abbaye's original statement ended in the first part with the rejection of Rav Yosef's position: "Perhaps it is not so... disrespect for consecrated objects no", and the continuation "אי נמי... אבל הכא דמחזי כעובדין דחול לא" is a later addition to Abbaye's original statement. In order to verify the correctness of this approach we systematically checked this form of rejection, "דלמא לא היא... אי נמי" וכו', which is calling into question the analyzed statement quoted before it by attacking both sides of a hypothesis based on the statement in question. We found that this form of analysis was used by the



sages of the Pumbeditha school, primarily, Abbaye, Rava and Rav Pappa and their disciples. A principal use of this form of analysis was to reject "שיטות" that were proposed. The "שיטה" that is the approach being an attempt to take various schools of thought and fit them into one group as we showed in the body of the dissertation is the work of the Eretz Israel school (Tiberian) headed by Rabbi Yochanan. Prior to this we virtually do not find systematizing proposals of this type. These traditions appear in the third - fourth generation in Babylon, and are proposed in the Pumbeditha school. It is here that the analysis method of rejecting both aspects of a proposed method is developed. In addition we pointed out the differences between the Israeli and the Babylonian schools in their attitude to the "שיטה". This form of rejection is then completely original, and we surmise that this is from Abbaye, as we cannot conceive that a later editor would add "ואי נמי" ("on the other hand") only to the words of the sages of the Pumbeditha school from the fourth generation on. In addition we indicated that in the Israeli school they saw in the "שיטה" complete identification in the opinions of the different sages, so much so that they used it to bring supporting evidence from it. The Babylonian school, however, saw it as a collection of opinions with some overlap and nothing more. We also showed that this form of rejection was not used in Babylon to reject accepted rulings but only for theoretical analysis.